

POLICY NUMBER: MP10570130

ITEM THREE SCHEDULE OF COVERED AUTOS YOU OWN

Covered Auto No.	DESCRIPTION		PURCHASED		TERRITORY
	Year, Model, Trade Name, Body Type	Serial Number(S) Vehicle Identification Number (VIN)	Original Cost New	Actual Cost & New (N) Used (U)	Town & State Where The Covered Auto Will Be Principally Garaged
001	1999 OTOKA TRAILER 5713		\$	\$	104 FARMINGTON NM
002	1994 MACK TRACTOR 0174		\$	\$	104 FARMINGTON NM
003	2000 DODGE PICKUP 0405		\$	\$	104 FARMINGTON NM
004	2006 EAGER BVR TRAILER 2122		\$	\$	104 FARMINGTON NM

Covered Auto No.	CLASSIFICATION							Code	Except For Towing All Physical Damage Loss Is Payable To You And The Loss Payee Named Below As Interests May Appear At The Time Of The Loss.
	Radius of Operation	Business Use s = service r = retail c = commercial	Size GVW, GCW Or Vehicle Seating Capacity	Age Group	Primary Rating Factor Liab. Phy. Dam.	Secondary Rating Factor			
001				6				67499	
002	50		45+	6				50499	
003	50	S	0-10	6				01499	
004				6				67499	

COVERAGES - PREMIUMS, LIMITS AND DEDUCTIBLES (Absence of a deductible or limit entry in any column below means that the limit or deductible entry in the corresponding ITEM TWO column applies instead.)

Covered Auto No.	LIABILITY		PERSONAL INJURY PROTECTION		ADDED P.I.P.	PROP. PROT. (Mich. Only)	
	Limit*	Premium	Limit Stated In Each P.I.P. End. Minus Deductible Shown Below	Premium	Limit Stated In Each Added P.I.P. End. Premium	Limit Stated In P.P.T. End. Minus Deductible Shown Below	Premium
001	\$	\$ 35.00	\$	\$	\$	\$	\$
002	\$	\$ 905.00	\$	\$	\$	\$	\$
003	\$	\$ 348.00	\$	\$	\$	\$	\$
004	\$	\$ 35.00	\$	\$	\$	\$	\$
Total Premium		\$		\$	\$		\$

Covered Auto No.	AUTO MEDICAL PAYMENTS		MEDICAL EXPENSE AND INCOME LOSS BENEFITS (Virginia Only)	
	Limit	Premium	Limit Stated In Each Medical Expense And Income Loss Endorsement For Each Person	Premium
001	\$	\$	\$	\$
002	\$	\$ 33.00	\$	\$
003	\$	\$ 33.00	\$	\$
004	\$	\$	\$	\$
Total Premium		\$		\$

Covered Auto No.	UNINSURED MOTORIST		UNDERINSURED MOTORISTS	
	Limit*	Premium	Limit*	Premium
001	\$	\$	\$	\$
002	\$	\$ 117.00	\$	\$
003	\$	\$ 117.00	\$	\$
004	\$	\$	\$	\$
Total Premium		\$		\$

Covered Auto No.	COMPREHENSIVE		SPECIFIED CAUSES OF LOSS		COLLISION		TOWING & LABOR	
	Limit Stated In ITEM TWO Minus Deductible Shown Below	Premium	Limit Stated In ITEM TWO Minus Deductible Shown Below	Premium	Limit Stated In ITEM TWO Minus Deductible Shown Below	Premium	Limit Per Disablement	Premium
001	\$	\$	\$	\$	\$	\$	\$	\$
002	\$	\$	\$	\$	\$	\$	\$	\$
003	\$	\$	\$	\$	\$	\$	\$	\$
004	\$	\$	\$	\$	\$	\$	\$	\$
Total Premium		\$		\$		\$		\$

*Split limits are presented in thousands of dollars.

CA DC 03 (Ed. 3/2006)

Contains Copyrighted Material of Insurance Services Office, Inc., (2006)
with its permission. Copyright Insurance Services Office, Inc., 2006

PAGE 0003 OF 0008

NAICO 000100

EXHIBIT 1

POLICY NUMBER: MP10570130

ITEM THREE SCHEDULE OF COVERED AUTOS YOU OWN

Covered Auto No.	DESCRIPTION		PURCHASED		TERRITORY
	Year, Model, Trade Name, Body Type	Serial Number(S) Vehicle Identification Number (VIN)	Original Cost New	Actual Cost & New (N) Used (U)	Town & State Where The Covered Auto Will Be Principally Garaged
005	2007 KENWORTH TRACTOR 8080		\$	\$100,000	104 FARMINGTON NM
006	2007 SPCNS TRAILER 2851		\$	\$	104 FARMINGTON NM
007	2007 CLEMENT TRAILER 6025		\$	\$ 23,000	104 FARMINGTON NM
008	1994 FORD PICKUP 4493		\$	\$	104 FARMINGTON NM

Covered Auto No.	CLASSIFICATION							Except For Towing All Physical Damage Loss Is Payable To You And The Loss Payee Named Below. As Interests May Appear At The Time Of The Loss.
	Radius of Operation	Business Use s = service r = retail c = commercial	Size GVW, GCW Or Vehicle Seating Capacity	Age Group	Primary Rating Factor Liab. Phy. Dam.	Secondary Rating Factor	Code	
005	50		45+	6			50499	
006				6			67599	
007				6			67499	FORD MOTOR CREDIT (ATLANTA
008	50	5	0-10	6			01499	

COVERAGES - PREMIUMS, LIMITS AND DEDUCTIBLES (Absence of a deductible or limit entry in any column below means that the limit or deductible entry in the corresponding ITEM TWO column applies instead.)

Covered Auto No.	LIABILITY		PERSONAL INJURY PROTECTION		ADDED P.I.P.	PROP. PROT. (Mich. Only)	
	Limit*	Premium	Limit Stated In Each P.I.P. End. Minus Deductible Shown Below	Premium	Limit Stated In Each Added P.I.P. End. Premium	Limit Stated In P.P.I. End. Minus Deductible Shown Below	Premium
005	\$	\$ 905.00	\$	\$	\$	\$	\$
006	\$	\$ 52.00	\$	\$	\$	\$	\$
007	\$	\$ 35.00	\$	\$	\$	\$	\$
008	\$	\$ 348.00	\$	\$	\$	\$	\$
Total Premium		\$		\$	\$		\$

Covered Auto No.	AUTO MEDICAL PAYMENTS		MEDICAL EXPENSE AND INCOME LOSS BENEFITS (Virginia Only)	
	Limit	Premium	Limit Stated In Each Medical Expense And Income Loss Endorsement For Each Person	Premium
005	\$	\$ 33.00	\$	\$
006	\$	\$	\$	\$
007	\$	\$	\$	\$
008	\$	\$ 33.00	\$	\$
Total Premium		\$		\$

Covered Auto No.	UNINSURED MOTORIST		UNDERINSURED MOTORISTS	
	Limit*	Premium	Limit*	Premium
005	\$	\$ 117.00	\$	\$
006	\$	\$	\$	\$
007	\$	\$	\$	\$
008	\$	\$ 117.00	\$	\$
Total Premium		\$		\$

Covered Auto No.	COMPREHENSIVE		SPECIFIED CAUSES OF LOSS		COLLISION		TOWING & LABOR	
	Limit Stated In ITEM TWO Minus Deductible Shown Below	Premium	Limit Stated In ITEM TWO Minus Deductible Shown Below	Premium	Limit Stated In ITEM TWO Minus Deductible Shown Below	Premium	Limit Per Disablement	Premium
005	\$ 500	\$ 200.00	\$	\$	\$ 500	\$ 717.00	\$	\$
006	\$	\$	\$	\$	\$	\$	\$	\$
007	\$ 1,000	\$ 90.00	\$	\$	\$ 1,000	\$ 156.00	\$	\$
008	\$	\$	\$	\$	\$	\$	\$	\$
Total Premium		\$		\$		\$		\$

*Split limits are presented in thousands of dollars.

CA 0003 (Ed. 3/2006)

Contains Copyrighted Material of Insurance Services Office, Inc., (2006)
with its permission. Copyright Insurance Services Office, Inc., 2006

PAGE 0004 OF 0008

NAICO 000101

EXHIBIT 1

POLICY NUMBER: MP10570130

ITEM THREE SCHEDULE OF COVERED AUTOS YOU OWN

Covered Auto No.	DESCRIPTION		PURCHASED		TERRITORY
	Year, Model, Trade Name, Body Type	Serial Number(S) Vehicle Identification Number (VIN)	Original Cost New	Actual Cost & New (N) Used (U)	Town & State Where The Covered Auto Will Be Principally Garaged
009	2008 STERLING TRUCK 1197		\$	\$ 60,000	104 FARMINGTON NM
010	2000 FREIGHTLINR TRUCK 9328		\$	\$	104 FARMINGTON NM
011	2005 CHEVROLET PICKUP 5495		\$	\$	104 FARMINGTON NM
012	2008 KENWORTH TRACTOR 5065		\$	\$ 60,000	104 FARMINGTON NM

Covered Auto No.	CLASSIFICATION							Code	Except For Towing All Physical Damage Loss Is Payable To You And The Loss Payee Named Below As Interests May Appear At The Time Of The Loss.
	Radius of Operation	Business Use s = service r = retail c = commercial	Size GVW, GCW Or Vehicle Seating Capacity	Age Group	Primary Rating Factor Liab. Phy. Dam.	Secondary Rating Factor			
009	50		45+	6				40479	
010	50	C	20-45	6				33499	
011	50	S	0-10	6				01499	
012	50		45+	6				50499	PACCAR FINANCIAL CORPORATI

COVERAGES - PREMIUMS, LIMITS AND DEDUCTIBLES (Absence of a deductible or limit entry in any column below means that the limit or deductible entry in the corresponding ITEM TWO column applies instead.)

Covered Auto No.	LIABILITY		PERSONAL INJURY PROTECTION		ADDED P.I.P.	PROP. PROT. (Mich. Only)	
	Limit*	Premium	Limit Stated In Each P.I.P. End. Minus Deductible Shown Below	Premium	Limit Stated In Each Added P.I.P. End. Premium	Limit Stated In P.F.I. End. Minus Deductible Shown Below	Premium
009	\$	\$ 790.00	\$	\$	\$	\$	\$
010	\$	\$ 526.00	\$	\$	\$	\$	\$
011	\$	\$ 348.00	\$	\$	\$	\$	\$
012	\$	\$ 905.00	\$	\$	\$	\$	\$
Total Premium		\$		\$	\$		\$

Covered Auto No.	AUTO MEDICAL PAYMENTS		MEDICAL EXPENSE AND INCOME LOSS BENEFITS (Virginia Only)	
	Limit	Premium	Limit Stated In Each Medical Expense And Income Loss Endorsement For Each Person	Premium
009	\$	\$ 33.00	\$	\$
010	\$	\$ 33.00	\$	\$
011	\$	\$ 33.00	\$	\$
012	\$	\$ 33.00	\$	\$
Total Premium		\$		\$

Covered Auto No.	UNINSURED MOTORIST		UNDERINSURED MOTORISTS	
	Limit*	Premium	Limit*	Premium
009	\$	\$ 117.00	\$	\$
010	\$	\$ 117.00	\$	\$
011	\$	\$ 117.00	\$	\$
012	\$	\$ 117.00	\$	\$
Total Premium		\$		\$

Covered Auto No.	COMPREHENSIVE		SPECIFIED CAUSES OF LOSS		COLLISION		TOWING & LABOR	
	Limit Stated In ITEM TWO Minus Deductible Shown Below	Premium	Limit Stated In ITEM TWO Minus Deductible Shown Below	Premium	Limit Stated In ITEM TWO Minus Deductible Shown Below	Premium	Limit For Disablement	Premium
009	\$ 1,000	\$ 164.00	\$	\$	\$ 1,000	\$ 444.00	\$	\$
010	\$	\$	\$	\$	\$	\$	\$	\$
011	\$	\$	\$	\$	\$	\$	\$	\$
012	\$ 1,000	\$ 173.00	\$	\$	\$ 1,000	\$ 468.00	\$	\$
Total Premium		\$		\$		\$		\$

*Split limits are presented in thousands of dollars.

GAD 03 (Ed. 8/2006)

Contains Copyrighted Material of Insurance Services Office, Inc., (2006) with its permission. Copyright Insurance Services Office, Inc., 2006

PAGE 0005 OF 0008

NAICO 000102

EXHIBIT 1

POLICY NUMBER: MP10570130

ITEM THREE SCHEDULE OF COVERED AUTOS YOU OWN

Covered Auto No.	DESCRIPTION		PURCHASED		TERRITORY
	Year, Model, Trade Name, Body Type	Serial Number(S) Vehicle Identification Number (VIN)	Original Cost New	Actual Cost & New (N) Used (U)	Town & State Where The Covered Auto Will Be Principally Garaged
013	2007 STERLING TRUCK 9612		\$101,461	\$	104 FARMINGTON NM
			\$	\$	
			\$	\$	
			\$	\$	

Covered Auto No.	CLASSIFICATION							Except For Towing All Physical Damage Loss Is Payable To You And The Loss Payee Named Below As Interests May Appear At The Time Of The Loss.
	Radius of Operation	Business Use s = service r = retail c = commercial	Size GVW, GOW Or Vehicle Seating Capacity	Age Group	Primary Rating Factor Liab. Phy. Dam.	Secondary Rating Factor	Code	
013	50		45+	6			40479	CITIZENS BANK, FARMINGTON, N

COVERAGES - PREMIUMS, LIMITS AND DEDUCTIBLES (Absence of a deductible or limit entry in any column below means that the limit or deductible entry in the corresponding ITEM TWO column applies instead.)

Covered Auto No.	LIABILITY		PERSONAL INJURY PROTECTION		ADDED P.I.P.		PROP. PROT. (Mich. Only)	
	Limit*	Premium	Limit Stated In Each P.I.P. End. Minus Deductible Shown Below	Premium	Limit Stated In Each Added P.I.P. End. Premium	Limit Stated In P.P.I. End. Minus Deductible Shown Below	Premium	
013	\$	\$ 790.00	\$	\$	\$	\$	\$	
	\$	\$	\$	\$	\$	\$	\$	
	\$	\$	\$	\$	\$	\$	\$	
	\$	\$	\$	\$	\$	\$	\$	
Total Premium		\$ 6,022.00		\$	\$		\$	

Covered Auto No.	AUTO MEDICAL PAYMENTS		MEDICAL EXPENSE AND INCOME LOSS BENEFITS (Virginia Only)	
	Limit	Premium	Limit Stated In Each Medical Expense And Income Loss Endorsement For Each Person	Premium
013	\$	\$ 33.00	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
Total Premium		\$ 297.00		\$

Covered Auto No.	UNINSURED MOTORIST		UNDERINSURED MOTORISTS	
	Limit*	Premium	Limit*	Premium
013	\$	\$ 117.00	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
Total Premium		\$ 1,053.00		\$

Covered Auto No.	COMPREHENSIVE		SPECIFIED CAUSES OF LOSS		COLLISION		TOWING & LABOR	
	Limit Stated In ITEM TWO Minus Deductible Shown Below	Premium	Limit Stated In ITEM TWO Minus Deductible Shown Below	Premium	Limit Stated In ITEM TWO Minus Deductible Shown Below	Premium	Limit Per Disablement	Premium
013	\$ 1,000	\$ 143.00	\$	\$	\$ 1,000	\$ 451.00	\$	\$
	\$	\$	\$	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$	\$	\$	\$
Total Premium		\$ 770.00		\$		\$ 2,236.00		\$

*Split limits are presented in thousands of dollars.

CA 0003 (Ed. 3/2006)

Contains Copyrighted Material of Insurance Services Office, Inc., (2006) with its permission. Copyright Insurance Services Office, Inc., 2006

PAGE 0006 OF 0008

NAICO 000103

EXHIBIT 1

BA140707 - ABC Concrete: Nelson v ABC Concrete & Montano

Dick Harrison to: Ryan Gilmore

05/04/2015 02:02 PM

From: Dick Harrison/NAICO

To: Ryan Gilmore/NAICO

Cc: Pat Gilmore/NAICO@NAICO, Rick Evans/NAICO@NAICO, Tony Gulley/NAICO@NAICO, tlagere@naico.com, James Bartodej/NAICO@NAICO, James Malone/NAICO@NAICO

Unless someone has a conflict, lets get together Wednesday, 9:30 AM, in Rick's conference room (B4-3). Please advise if you have a conflict and need to reschedule.

Dick
4349

Ryan Gilmore---05/04/2015 01:05:55 PM---Below are my initial thoughts on this claim. I should be available this week for a meeting if you wo

From: Ryan Gilmore/NAICO

To: Dick Harrison/NAICO@NAICO

Cc: Pat Gilmore/NAICO@NAICO

Date: 05/04/2015 01:05 PM

Subject: Re: BA140707 - ABC Concrete: Nelson v ABC Concrete & Montano

Below are my initial thoughts on this claim. I should be available this week for a meeting if you would like to discuss this claim, including our response to the tender of defense from the law firm hired by Scottsdale to defend Concrete and Montano.

Is the DIV (Mr. Montano) entitled to coverage under the NAICO policy?

Based on the facts as described by you in a previous email, I believe that a court would conclude that Montano was operating the covered "auto" at issue with the permission of both Septic and Concrete, and would therefore be entitled to an unqualified defense under the NAICO policy.

Is Concrete an insured under the Scottsdale policy?

I agree that Concrete is an insured under Paragraph 1.d. of the Scottsdale policy issued to Septic. This is because Concrete is a lessor of a covered "auto" that is leased to Septic under a written agreement that does not require Concrete to hold Septic harmless, and the covered "auto" at issue was being used in Septic's business as a "motor carrier" for hire. Concrete would also likely qualify as insured under Paragraph 1.e. of the policy as someone liable for the conduct of an "insured."

Is the coverage afforded under the Scottsdale policy primary or excess over the the insurance afforded under the NAICO policy?

Although there may arguments to the contrary, I believe that a court would likely conclude that the Scottsdale policy is excess over the NAICO policy. This is because I believe that, unlike Septic, Concrete is not a "motor carrier" for hire. In order to be a "motor carrier" under the Scottsdale policy, Concrete has to be a person or organization providing transportation by "auto" in the furtherance of a commercial enterprise (the definition of "motor carrier" in the policy). Unlike Septic, Concrete is not in the business of transporting persons or property. Rather, Concrete has someone else (Septic) transport its products. Thus, although the NAICO

policy issued to Concrete has several tractors and trailers listed, Concrete may not be a "motor carrier" as defined by the Scottsdale policy. Moreover, even if there were no dispute that Concrete is a "motor carrier" under the Scottsdale policy, Concrete would still need to qualify as a "motor carrier" *for hire* (a phrase that is undefined in the Scottsdale policy). **It should also be noted that unlike the Scottsdale policy (issued to Septic), the NAICO policy (issued to Concrete) contains neither a Form F endorsement nor an MCS 90 endorsement.** This is likely because Concrete is not required to have motor carrier authority. If Concrete was not required to have motor carrier authority, it may be difficult to argue that Concrete is a "motor carrier" for hire under the Scottsdale policy. However, if Concrete is a motor carrier for hire, I agree with you that the both the NAICO policy and the Scottsdale policy provide primary coverage to Concrete.

Ryan Gilmore

(405) 258-4263
P.O. Box 9
Chandler, OK 74834

Dick Harrison---04/27/2015 11:30:44 AM---Ryan, This supplements my e-mails of 4/22/15 & 4/24/15. We have now received a copy of Scottsdale's

From: Dick Harrison/NAICO
To: Ryan Gilmore/NAICO@NAICO
Cc: Pat Gilmore/NAICO@NAICO
Date: 04/27/2015 11:30 AM
Subject: BA140707 - ABC Concrete: Nelson v ABC Concrete & Montano

Ryan,

This supplements my e-mails of 4/22/15 & 4/24/15. We have now received a copy of Scottsdale's policy. Attached is a copy that I have bookmarked & highlighted.

The policy covers scheduled autos only. The involved vehicle is scheduled as vehicle #3.

The key to our analysis of coverage will be the determination of whether or not ABC Concrete falls within the definition of "motor carrier" in the Motor Carrier Coverage Form (CA 00 20 10 13). The definition reads as follows: "Motor Carrier" means a person or organization providing transportation by "auto" in the furtherance of a commercial enterprise. Since the policy that NAICO issued to Concrete has several tractors & trailers listed, I think Concrete would fall within the definition of a "motor carrier"

Concrete would be an insured under paragraph d of Who Is An Insured. The (1)(a) & (1)(b) exceptions for "motor carriers" do not appear to apply to this situation. Therefore, I think Concrete is an insured under Scottsdale's policy.

Under paragraph b of Other Insurance, Scottsdale's policy would be primary if Concrete is a "motor carrier". If Concrete is not a "motor carrier", Scottsdale's policy would be excess based on paragraph e of Other Insurance.

If Concrete is a "motor carrier" as defined, I believe Concrete would be insured by both policies and that both coverages would be primary. Therefore, they would apply on a 50/50 basis based on the limits.

Please review and advise your thoughts regarding the coverage issues and the primary/excess issues. If you think we need additional information, please advise and I will forward the request to the file handler.

Thanks,

Dick
4349

[attachment "BA140707 - 20131105 LTO0015269 (Scottsdale).pdf" deleted by Ryan Gilmore/NAICO]



darlene pls check ownership
report, is different than
named insured report

"Setting the standard that others strive for..."™

March 12, 2013

REVIEWED

By anita marshall at 12:40 pm, Mar 26, 2013

Mr. Doug Murray
A B C Concrete Manufacturing Company, Inc.
1004 South Lake Street
Farmington, NM 87401-5660

RE: MP10570030 PR14100030 – 2/9/14

Dear Mr. Murray:

This is to confirm my March 11 telephone contact and thank you for taking the time to discuss the operations at A B C Concrete Manufacturing Company, Inc. The purpose of my call was to obtain information for our underwriting file and determine where I might be of assistance in your efforts to control costly accidents.

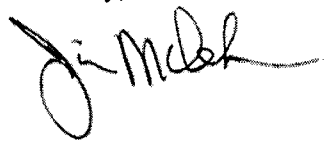
During our visit we discussed your operation, reviewed the loss control activities currently in place, and discussed the past loss record.

As a result of my survey, I have no loss control recommendations to offer at this time.

I have enclosed for your use a copy of our safety video/DVD catalog. We encourage you to take advantage of this free service for use in your safety program.

Thank you for your time and cooperation. If I can be of any service, feel free to contact me at 1-800-822-7802 ext. 4506.

Sincerely,



Jimmie Mileham
Loss Control Consultant

cb
enclosure

cc: Woods Insurance Service, Inc.

Our reports are based on observations or information available to us at the time surveys are conducted which may not discover all hazards. We cannot warrant safety, health, or compliance with any rule or regulation. We can only assist you in fulfilling your responsibility in controlling accidents.

1010 Manvel Avenue □ P.O. Box 9 □ Chandler, Oklahoma 74834
(405)258-0804 □ WATS 1-800-822-7802

NAICO 003099

EXHIBIT 1

Loss Control Report Cover

Account Name and P.O. Address A B C Concrete Manufacturing Co., Inc. 1004 South Lake Street Farmington, NM 87401-5660							Location(s) - Plants, Divisions, Other							
Coverage	Checklist LC No.	Date of Report			Surveyed By	Office OK Only	Total Hours	Policy Number (or "Prospective")	Expiration Date			Requested By	Distribution of Loss Control Report:	
GL	NARR	3	11	13	JM	OK		MP10570030	2	9	14	055	No.	Sent To:
AU	LC826												1	LCF
PROP								PR14100030					1	UW
Person Contacted (Name and Title) Doug Murray, Owner									Producing Agent Woods Insurance			Service Status NFS		
OWNERSHIP: <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input checked="" type="checkbox"/> CORPORATION <input type="checkbox"/> OTHER (DESCRIBE): <input checked="" type="checkbox"/> PROFIT <input type="checkbox"/> NON-PROFIT														
a) IN BUSINESS: 35 YEARS					b) AT THIS ADDRESS: YEARS					c) UNDER PRESENT OWNERSHIP: YEARS				
INSURED IS <input type="checkbox"/> TENANT <input type="checkbox"/> GENERAL LESSEE <input type="checkbox"/> OWNER. IS 90% OF THE PREMISES LEASED TO AND UNDER CONTROL OF A SINGLE LESSEE? <input type="checkbox"/> YES <input type="checkbox"/> NO														
COMMENT IN NARRATIVE AND ATTACH APPROPRIATE CHECKLIST(S) OR REPORT FORM(S).														

A. Nature and Size of Account (Briefly state nature of operations and indicate size; e.g., no. of employees, vehicles, etc):

The company is owned by Doug Murray – 49% and Juanita Murray – 51% (husband and wife). They operate as a pre-cast concrete product company and manufacture over 200 items including manholes, septic tanks, highway barriers, cattle guards, etc. This accounts for approximately 95% of their business. They also do ready mix concrete. The ready mix operation hauls sand, gravel, and cement to their customers' locations and it is mixed there for use on location. Pre-cast products are said to be sold in 46 states. They do no overseas sales.

Subcontractors are used very rarely and certificates of insurance are required.

On occasion the customer will be allowed on their yard, however, he must wear appropriate personal protective equipment and be escorted by a member of management.

The company currently employs 11 of which two drive – the owner and his son. Their busy season is from April through November and employees may reach 20 at that time.

Vehicles consist of five trailers, two pickups, three truck tractors, and two mixer trucks.

B. Summary of Loss Potential

1. Provide BRIEF comments on the strengths and/or weaknesses of present control measures, management and supervisory controls.
2. Provide BRIEF comments on significant loss problems and/or potentials. Delineate any exposures needing further evaluation.
3. List recommendations to correct substandard conditions noted in checklists (Indicate importance and probability of favorable action).
4. Explain any situation noted above where it is felt that conditions will not be brought to "standard risk" level.

LC820

CONFIDENTIAL - FOR COMPANY USE ONLY

☐ Additional Comments Attached

NAICO 003100

EXHIBIT 1

1. Policyholder has several years of experience in this type of operation, having been in business since 1978. The company is managed daily in a hands-on manner by the owner. Policyholder was found to have a good attitude toward safety and accident prevention and appears to be very proactive in his safety program. It appears that management does a good job of vehicle maintenance with proper documentation said to be maintained.

2. Policyholder has had no significant loss problems in the past.

3. None.

4. None.

C. Loss Control Service Plan

1. Outline specific service plan to further evaluate and/or correct any conditions noted in B 1 or B 2.
2. Show service contact months and indicate what follow-up activity is planned for recommendations.

1. & 2. Due to size of account, no future loss control service is planned unless requested by underwriting. This appears to be a standard risk for size and type of operation.

Loss Control**Small or Incidental Fleet Survey Guide**

(To be attached to LC820 - Report Cover)

Account Name: A B C Concrete Manufacturing Company, Inc.Policy No. MP10570030Surveyed By: JMReport Date: 3 | 11 | 13**1.0 Vehicles**

1.1. Number of Vehicles

	Private Passenger	Pickups	Vans	Trucks	Tractors	Semi-Trailers	Trailers	Other Special Equipment
Owned		3		5			5	
Leased								

1.2. Are vehicles used for hauling? ☒ Yes ☐ No If yes, provide nature of cargo:

Raw material and products.

1.3. Is hauling done for hire? ☐ Yes ☒ No

If yes, percentage of time? _____ % Specialized Equipment: _____

If yes, is hauling done for one firm only? ☐ Yes ☐ No1.4. Normal radius of operations: 150 miles Vehicles taken out of State? ☐ Yes ☐ No Major cities: _____

Comments:

Policyholder is located in Farmington, NM, and will travel to Colorado, Arizona, and Utah.

2.0 Maintenance2.1. How often is regular maintenance performed? By mileage per manufacturer's recommendations2.2. Are records kept? ☒ Yes ☐ No2.3. Who is responsible for having maintenance performed? Owner2.4. Who performs maintenance? Owner2.5. Any physical damage to vehicle(s)? ☐ Yes ☒ No

If yes, explain: _____

2.6. Where are vehicles kept in evenings? At insured's yard in FarmingtonIf in lot, what type of security is in place? Six foot chain link fence with razor wire & gatedSufficient lighting? ☒ Yes ☐ No Key control: Yes

Comments:

3.0 Drivers3.1. Are vehicles driven home by employees? ☐ Yes ☒ No3.2. Are employees allowed other personal use of vehicles? ☐ Yes ☒ No3.3. Are employee's family members allowed use of vehicles? ☐ Yes ☒ NoYouthful Drivers? ☐ Yes ☒ No3.4. Any drivers with accidents or traffic violations? ☐ Yes ☒ No

3.5. Hiring Practices for drivers:

MVRs checked?

☒ Yes☐ No

Drug Testing?

☒ Yes☐ No

Check of past work record?

☐ Yes☐ No

Driver Turnover:

Very little

Physicals?

☒ Yes☐ No

3.6. Are annual MVRs obtained on all drivers?

☒ Yes☐ No

3.7. Company use of personal vehicles?

☐ Yes☒ No

If yes, certificates obtained?

☐ Yes☐ No

Limits required:

3.8. Are all drivers properly licensed?

☒ Yes☐ No

3.9. Total number of drivers?

2

3.10. Number of drivers with Commercial Driver Licenses:

2

3.11. Are any drivers under the age of 25 or over 60?

☐ Yes☒ No

3.12. Driver Qualification files?

☒ Yes☐ No

Comments:

Currently only the owner and his son are driving.

3.13. Describe driver training / orientation procedures:

Informal driver training

3.14. Policies on vehicle use?

☒ Yes☐ No

3.15. Loss records?

☒ Yes☐ No

3.16. Comments regarding previous losses / trends:

Policyholder has had no large losses or trends.

Nichole Cottington
<Nichole@woodsins.com>

12/19/2012 05:20 PM

To "amarshall@naico.com" <amarshall@naico.com>
cc Lyle Love <Lyle@woodsins.com>, Bev Owen
<Bev@woodsins.com>

bcc

Subject RE: ABC Concrete Mfg Co - status

02/09/08-12/11/12 Loss runs attached. The client's website was very outdated, so they've recently updated it with their current operations.

Nichole Cottington, CISR
Commercial Service Representative
Woods Insurance Service, Inc.
Farmington, NM 87401

-----Original Message-----

From: amarshall@naico.com [mailto:amarshall@naico.com]

Sent: Tuesday, December 18, 2012 11:50 AM

To: Nichole Cottington

Subject: RE: ABC Concrete Mfg Co - status

hahah, but still out there on the internet. if you get me the loss runs,
just add a note about the outdated information and advise no longer providing any overseas
products

Anita Marshall, CIC, AU, CISR, AIS
SR UNDERWRITER

800-822-7802 EXT 4326

FAX: 405-258-5415

From: Nichole Cottington

To: "amarshall@naico.com",

Date: 12/18/2012 11:23 AM

Subject: RE: ABC Concrete Mfg Co - status

ACORD™ BUSINESS AUTO SECTION

OP ID: NC

DATE (MM/DD/YYYY)
1/29/2013

PRODUCER
WOODS INSURANCE SERVICE, INC.
P.O. Box 3830
Farmington, NM 87499
Beverly Owen

PHONE (A/C, No. Ext): 505-326-1111
FAX NO. (A/C, No. Ext): 505-326-3130

APPLICANT
(First Named Insured)
ABC Concrete Mfg. Co.

EFFECTIVE DATE
02/09/13

EXPIRATION DATE
02/09/14

DIRECT BILL
X

PAYMENT PLAN

AUDIT

CODE:
AGENCY CUSTOMER ID: ABCC001

SUB CODE:

FOR COMPANY USE ONLY

COVERAGE LIMITS

COVERAGES	COVERED AUTO SYMBOLS	LIMITS	COVERAGES	COVERED AUTO SYMBOLS	LIMITS	
LIABILITY	X 1 4 9	X CSL BI EA PER \$ 1,000,000				
	2 7	BI EACH ACCIDENT \$				
	3 8	PROPERTY DAMAGE \$				
PERSONAL INJURY PROTECTION	5 7	OR EQUIVALENT DEDUCTIBLE NO-FAULT COVERAGE \$	PHYSICAL DAMAGE			
ADDITIONAL P.I.P.	5 7	TOTAL W/C \$ ME \$	TOWING & LABOR	3 7	\$	
MEDICAL PAYMENTS	X 2 4 8	EACH PERSON \$ 5,000	COMPREHENSIVE	2 4 8		
UNINSURED MOTORIST	X 2 6	X CSL BI EA PER \$ 1,000,000	SPECIFIED CAUSES OF LOSS	2 4 8		
	3 7	BI EACH ACCIDENT \$		3 7		
	4	PROPERTY DAMAGE \$				
UNDERINSURED MOTORIST	X 2 6	X CSL BI EA PER \$ 1,000,000	COLLISION	2 4 8		
	3 7	BI EACH ACCIDENT \$		3 7		
	4	PROPERTY DAMAGE \$				
HIRED/BORROWED LIABILITY	STATES NM	COST OF HIRE \$ X IF ANY BASIS	HIRED PHYSICAL DAMAGE	STATES	# DAYS # VEH	
NON-OWNED LIABILITY	STATES NM	GROUP TYPE NUMBER OF		COVERAGE IS:	PRIMARY	SECONDARY
	X EMPLOYEES 10					
	VOLUNTEERS					
	PARTNERS					

ENDORSEMENTS, FORMS, CONDITIONS

PIP Per/Acc Limits:

COVERED AUTO SYMBOLS

(1) ANY AUTO
(2) ALL OWNED AUTOS
(3) OWNED PRIVATE PASSENGER AUTOS

(4) OWNED AUTOS OTHER THAN PRIVATE PASSENGER
(5) ALL OWNED AUTOS WHICH REQUIRE NO-FAULT COVERAGE
(6) OWNED AUTOS SUBJECT TO COMPULSORY U.M. LAW

(7) AUTOS SPECIFIED ON SCHEDULE
(8) HIRED AUTOS
(9) NON-OWNED AUTOS

DRIVER INFORMATION (include drivers who frequently use own vehicles)

DRIVER #	NAME (include address, if required)	DATE OF BIRTH	YEAR LIC	DRIVERS LICENSE NUMBER/ SOCIAL SECURITY NUMBER	STATE LIC	USE VEH #	% USE
001	Doug Murray	09/27/55		012186177	NM		
002	John Cienin	05/08/48		029433224	NM		
003	Jim Blevins	02/12/59		030424107			
004	Keith Bradley	09/28/68		503430606	NM		
005	Edward Dickson	05/16/68		101926371	NM		

VEHICLE DESCRIPTION

VEH #	YEAR	MAKE	MODEL	TRAILER	SYN/AGE	COST NEW
001	2000	CPS	Bellydump	V.L.N.: 4Z41116227P002979		\$ 25,400
CITY, STATE, ZIP		Farmington NM 87401		G.V.W./G.C.W.	CLASS	SIC
WHERE GARAGED		87401		68499	FACTOR	SEAT CT
RADIUS		FARTHEST TERM				

DRIVE TO WORK/SCHOOL

UNDER 15 MILES

15 MILES OR OVER

USE

PLEASURE

FARM

X COMM'L

RETAIL

SERVICE

CHECK COVERAGES

X LIAB

PIP

ADD'L PIP

X MED PAY

X UNINS MOTOR

UNDRIKS MOTOR TOWING & LABOR SPEC C OF L

F

FT

FTW

LSP

X COMP

COLL

DEDUCTIBLES

AA

ST AMT

X COMP

\$ 500

\$ 500

SPEC C OF L

COLL

ACORD 127 (2/98)

PLEASE COMPLETE REVERSE SIDE

© ACORD CORPORATION 1993

ABCC001 OP ID: NC

VEHICLE DESCRIPTION (continued)																	
VEH #	YEAR	MAKE:	Otoka	BODY TYPE:	TRAILER	SYN/WAGE	COST NEW										
002	1999	MODEL:	Lowboy	V.I.N.:	1A9L64522XA245713		\$										
CITY, STATE, ZIP WHERE GARAGED				Farmington NM 87401	TERR	GVW/GCW	68499	CLASS	SIC	FACTOR	SEAT CF	RADIUS	FARTHEST TERM				
DRIVE TO WORK/SCHOOL		USE	<input checked="" type="checkbox"/>	COMM'L	<input checked="" type="checkbox"/>	CHECK COVERAGES	ADD'L PIP	<input checked="" type="checkbox"/>	UNDRINS MOTOR TOWING & LABOR SPEC C OF L	<input checked="" type="checkbox"/>	F	LSP	DEDUCTIBLES	ACV	COMF	SPEC C OF L	
<input type="checkbox"/> UNDER 15 MILES		<input type="checkbox"/> PLEASURE	<input type="checkbox"/>	RETAIL	<input checked="" type="checkbox"/>	LIAB	<input checked="" type="checkbox"/>	MED PAY	<input type="checkbox"/>	FT	COMP	<input type="checkbox"/>	AA	<input type="checkbox"/>	ST AMT	\$	
<input type="checkbox"/> 15 MILES OR OVER		<input type="checkbox"/> FARM	<input type="checkbox"/>	SERVICE	<input type="checkbox"/>	PIP	<input checked="" type="checkbox"/>	UNINS MOTOR	<input type="checkbox"/>	FTW	COLL	\$				\$	
VEH #	YEAR	MAKE:	Mack	BODY TYPE:	TRUCK	SYN/WAGE	COST NEW										
003	1994	MODEL:		V.I.N.:	1M1AA13Y1RW030174		\$ 15,000										
CITY, STATE, ZIP WHERE GARAGED				Farmington NM 87401	TERR	GVW/GCW	36499	CLASS	SIC	FACTOR	SEAT CF	RADIUS	FARTHEST TERM				
DRIVE TO WORK/SCHOOL		USE	<input checked="" type="checkbox"/>	COMM'L	<input checked="" type="checkbox"/>	CHECK COVERAGES	ADD'L PIP	<input checked="" type="checkbox"/>	UNDRINS MOTOR TOWING & LABOR SPEC C OF L	<input checked="" type="checkbox"/>	F	LSP	DEDUCTIBLES	ACV	<input checked="" type="checkbox"/>	COMF	SPEC C OF L
<input type="checkbox"/> UNDER 15 MILES		<input type="checkbox"/> PLEASURE	<input type="checkbox"/>	RETAIL	<input checked="" type="checkbox"/>	LIAB	<input checked="" type="checkbox"/>	MED PAY	<input type="checkbox"/>	FT	COMP	<input type="checkbox"/>	AA	<input type="checkbox"/>	ST AMT	\$ 500	
<input type="checkbox"/> 15 MILES OR OVER		<input type="checkbox"/> FARM	<input type="checkbox"/>	SERVICE	<input type="checkbox"/>	PIP	<input checked="" type="checkbox"/>	UNINS MOTOR	<input type="checkbox"/>	FTW	COLL	\$				\$ 500	
VEH #	YEAR	MAKE:	Dodge	BODY TYPE:	TRUCK	SYN/WAGE	COST NEW										
004	2000	MODEL:	Dakota	V.I.N.:	1B7GL22XXYS680405		\$ 5,000										
CITY, STATE, ZIP WHERE GARAGED				Farmington NM 87401	TERR	GVW/GCW	01499	CLASS	SIC	FACTOR	SEAT CF	RADIUS	FARTHEST TERM				
DRIVE TO WORK/SCHOOL		USE	<input checked="" type="checkbox"/>	COMM'L	<input checked="" type="checkbox"/>	CHECK COVERAGES	ADD'L PIP	<input checked="" type="checkbox"/>	UNDRINS MOTOR TOWING & LABOR SPEC C OF L	<input checked="" type="checkbox"/>	F	LSP	DEDUCTIBLES	ACV	<input checked="" type="checkbox"/>	COMF	SPEC C OF L
<input type="checkbox"/> UNDER 15 MILES		<input type="checkbox"/> PLEASURE	<input type="checkbox"/>	RETAIL	<input checked="" type="checkbox"/>	LIAB	<input checked="" type="checkbox"/>	MED PAY	<input type="checkbox"/>	FT	COMP	<input type="checkbox"/>	AA	<input type="checkbox"/>	ST AMT	\$ 500	
<input type="checkbox"/> 15 MILES OR OVER		<input type="checkbox"/> FARM	<input type="checkbox"/>	SERVICE	<input type="checkbox"/>	PIP	<input checked="" type="checkbox"/>	UNINS MOTOR	<input type="checkbox"/>	FTW	COLL	\$				\$ 500	
VEH #	YEAR	MAKE:	Eger	BODY TYPE:	TRAILER	SYN/WAGE	COST NEW										
005	2006	MODEL:	Beaver	V.I.N.:	112H8V3277L072122		\$ 18,530										
CITY, STATE, ZIP WHERE GARAGED				Farmington NM 87401	TERR	GVW/GCW	68499	CLASS	SIC	FACTOR	SEAT CF	RADIUS	FARTHEST TERM				
DRIVE TO WORK/SCHOOL		USE	<input checked="" type="checkbox"/>	COMM'L	<input checked="" type="checkbox"/>	CHECK COVERAGES	ADD'L PIP	<input checked="" type="checkbox"/>	UNDRINS MOTOR TOWING & LABOR SPEC C OF L	<input checked="" type="checkbox"/>	F	LSP	DEDUCTIBLES	ACV	<input checked="" type="checkbox"/>	COMF	SPEC C OF L
<input type="checkbox"/> UNDER 15 MILES		<input type="checkbox"/> PLEASURE	<input type="checkbox"/>	RETAIL	<input checked="" type="checkbox"/>	LIAB	<input checked="" type="checkbox"/>	MED PAY	<input type="checkbox"/>	FT	COMP	<input type="checkbox"/>	AA	<input type="checkbox"/>	ST AMT	\$ 500	
<input type="checkbox"/> 15 MILES OR OVER		<input type="checkbox"/> FARM	<input type="checkbox"/>	SERVICE	<input type="checkbox"/>	PIP	<input checked="" type="checkbox"/>	UNINS MOTOR	<input type="checkbox"/>	FTW	COLL	\$				\$ 500	
ADDITIONAL INTERESTS/CERTIFICATE RECIPIENTS (ATTACH accord 45 FOR ADDITIONAL NAMES)																	
INTEREST	RANK:	NAME AND ADDRESS				REFERENCE #:	CERTIFICATE REQUIRED				INTEREST IN ITEM NUMBER						
<input checked="" type="checkbox"/>	ADDITIONAL INSURED	Ford Motor Credit (Atlanta)					FORDM02				LOCATION: BUILDING:						
<input checked="" type="checkbox"/>	LOSS PAYEE										VEHICLE: 008 BOAT:						
<input type="checkbox"/>	MORTGAGEE										SCHEDULED ITEM NUMBER:						
<input type="checkbox"/>	LIENHOLDER										OTHER						
<input type="checkbox"/>	EMPLOYEE AS LESSOR																
		P.O. Box 105704															
		Atlanta, GA 30348															
		ITEM DESCRIPTION:															
GENERAL INFORMATION																	
EXPLAIN ALL "YES" RESPONSES										YES	NO	7. DO OPERATIONS INVOLVE TRANSPORTING HAZARDOUS MATERIAL?					<input checked="" type="checkbox"/>
1. WITH THE EXCEPTION OF ENCUMBRANCES, ARE ANY VEHICLES NOT SOLELY OWNED BY AND REGISTERED TO THE APPLICANT?										<input checked="" type="checkbox"/>		8. ANY HOLD HARMLESS AGREEMENTS?					<input checked="" type="checkbox"/>
2. DO OVER 50% OF THE EMPLOYEES USE THEIR AUTOS IN THE BUSINESS?										<input checked="" type="checkbox"/>		9. ANY VEHICLES USED BY FAMILY MEMBERS? IF SO, IDENTIFY IN REMARKS.					<input checked="" type="checkbox"/>
3. IS THERE A VEHICLE MAINTENANCE PROGRAM IN OPERATION?										<input checked="" type="checkbox"/>		10. DOES THE APPLICANT OBTAIN MVR VERIFICATIONS?					<input checked="" type="checkbox"/>
4. ARE ANY VEHICLES LEASED TO OTHERS?										<input checked="" type="checkbox"/>		11. DOES THE APPLICANT HAVE A SPECIFIC DRIVER RECRUITING METHOD?					<input checked="" type="checkbox"/>
5. ARE ANY VEHICLES CUSTOMIZED, ALTERED OR HAVE SPECIAL EQUIPMENT?										<input checked="" type="checkbox"/>		12. ARE ANY DRIVERS NOT COVERED BY WORKERS COMPENSATION?					<input checked="" type="checkbox"/>
6. ARE ICC, PUC OR OTHER FILINGS REQUIRED?										<input checked="" type="checkbox"/>		13. ANY VEHICLES OWNED BUT NOT SCHEDULED ON THIS APPLICATION?					<input checked="" type="checkbox"/>
										<input checked="" type="checkbox"/>		14. ANY DRIVERS WITH MOVING TRAFFIC VIOLATIONS?					<input checked="" type="checkbox"/>
DESCRIPTION OF GARAGE/STORAGE LOCATIONS												MAXIMUM DOLLAR VALUE SUBJECT TO LOSS					
REMARKS																	
UNINSURED AND UNDERINSURED MOTORISTS COVERAGES (Check the appropriate box(es) below and sign where applicable)																	
DO NOT USE IN AR, AZ, CA, CT, DE, FL, GA, IA, IL, MO, NJ, NY, OK, OR, PA, RI, SC, WV; USE SPECIFIC STATE SUPPLEMENT. MINIMUM UM LIMITS REQUIRED IN DC, ME, MN, MO, VT, VA, WA, WI.																	
I UNDERSTAND AND ACKNOWLEDGE THAT UNINSURED MOTORIST (UM) AND UNDERINSURED MOTORISTS (UIM) COVERAGES HAVE BEEN EXPLAINED TO ME. I HAVE BEEN OFFERED THE OPTIONS OF:										<input checked="" type="checkbox"/>	SELECTING UM AND UIM LIMITS EQUAL TO MY LIABILITY LIMITS.						
										<input type="checkbox"/>	SELECTING UM AND UIM LIMITS LOWER THAN MY LIABILITY LIMITS, OR						
										<input type="checkbox"/>	REJECTING COVERAGE ENTIRELY.						
I UNDERSTAND THAT THE COVERAGE SELECTION AND LIMIT CHOICES INDICATED HERE WILL APPLY TO ALL FUTURE POLICY RENEWALS, CONTINUATIONS AND CHANGES UNLESS I NOTIFY YOU OTHERWISE IN WRITING.										1. I SELECT UM AND UIM LIMITS INDIC IN THIS APP							(APPLICANT'S SIGNATURE)
										2. I REJECT UM BODILY INJURY COVERAGE							(APPLICANT'S SIGNATURE)
										3. I REJECT UIM BODILY INJURY COVERAGE							(APPLICANT'S SIGNATURE)
										4. I REJECT UM PROPERTY DAMAGE COVERAGE							(APPLICANT'S SIGNATURE)
										5. I REJECT UIM PROPERTY DAMAGE COVERAGE							(APPLICANT'S SIGNATURE)
ACCORD 127 (2/96) ATTACH TO APPLICANT INFORMATION SECTION																	

NAICO 003741

EXHIBIT 1

PR#119220

RAY, GLAETTA

2/28/2017

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

NATIONAL AMERICAN INSURANCE
COMPANY,

Plaintiff,

vs.

No. 1:15-CV-01169-KG-KBM

ABC CONCRETE MFG., CO., INC.;
ABC CONCRETE MFG. CO., INC.
d/b/a ABC SEPTIC SYSTEMS,
INC.; NICHOLAS MONTANO;
SCOTTSDALE INSURANCE COMPANY
and NATIONAL CASUALTY COMPANY,
Defendants.

DEPOSITION OF GLAETTA RAY
TAKEN ON BEHALF OF THE DEFENDANTS
ON FEBRUARY 28, 2017 AT 8:39 AM
IN OKLAHOMA CITY, OKLAHOMA

APPEARANCES

On behalf of the PLAINTIFF:

James H. Johansen
BUTT, THORNTON & BAEHR, P.C.
4101 Indian School Road, NE, Suite 300
Albuquerque, New Mexico 87110
505.884.0777
jhjohansen@btblaw.com

On behalf of the PLAINTIFF:

R. Patrick Gilmore
NATIONAL AMERICAN INSURANCE COMPANY
1010 Manvel Avenue
Chandler, Oklahoma 74834
405.258.4262
pgilmore@naico.com

(Appearances continued on Page 2.)

REPORTED BY: Jody Graham, CSR, RPR, RMR, CRR

PR#119220

RAY, GLAETTA

2/28/2017

<p>1 New Mexico to Arizona, would that be long-haul 2 trucking business for you?</p> <p>3 A Depends on what it's for. If it's something 4 that they do on a regular basis or if they're doing it 5 for hire for others. It would depend on the nature of 6 the business.</p> <p>7 Q Okay. Let me just go back for a minute. So 8 would you define long-haul for me, please.</p> <p>9 A Long-haul?</p> <p>10 Q I want to know how the company or how you 11 understand NAICO defines the term "long-haul" in the 12 context of your long-haul trucking --</p> <p>13 A Program?</p> <p>14 Q -- business.</p> <p>15 A Well, the long --</p> <p>16 MR. JOHANSEN: Object to the form. Are you 17 asking her whether -- how she defines it or how the 18 company defines it?</p> <p>19 MR. McMICKLE: How she understands the 20 company defines it.</p> <p>21 MR. JOHANSEN: Okay.</p> <p>22 THE WITNESS: Okay. Well, I mean, 23 long-haul -- I mean, definition of long-haul's 24 anything that's over 200 miles.</p> <p>25 Q (BY MR. McMICKLE) Where did you get that</p> <p style="text-align: center;">18</p>	<p>1 Q And when you were writing long-haul trucking 2 business, did you oversee that business from an 3 underwriting perspective?</p> <p>4 A For a short -- for a short period of time.</p> <p>5 Q Okay. And you understand that to cross 6 state lines in a tractor-trailer -- which I'll define 7 as a vehicle with a gross vehicle weight of over 8 26,000 pounds -- that whatever entity is operating the 9 truck has to have some sort of authority from the 10 federal government?</p> <p>11 A Yes, sir.</p> <p>12 Q Okay. So, in other words, a private motor 13 carrier crossing state lines, it's your understanding, 14 still has to have authority from the federal 15 government?</p> <p>16 A Yes.</p> <p>17 Q Okay. Now, when you would write long-haul 18 trucking business, I assume you would write some 19 private carriers and some for-hire carriers?</p> <p>20 A I believe that we did. I think the majority 21 of what we have is actual for-hire.</p> <p>22 Q Okay. Do you ever recall writing a private 23 carrier?</p> <p>24 A Not -- no, not myself, I didn't.</p> <p>25 Q Okay. Do you ever recall limiting coverage</p> <p style="text-align: center;">20</p>
<p>1 definition?</p> <p>2 A That definition is from the Insurance 3 Services Organization.</p> <p>4 Q The ISO?</p> <p>5 A Yes, ISO which is what we follow.</p> <p>6 Q Okay. And what do you classify -- or how do 7 you define interstate?</p> <p>8 A Interstate, crossing one state line to the 9 other.</p> <p>10 Q Okay. And how do you define for-hire?</p> <p>11 A When they haul for people other than 12 themselves.</p> <p>13 Q Okay. And when you were writing long-haul 14 trucking business, did you rate for-hire motor 15 carriers differently than private carriers?</p> <p>16 A Yes.</p> <p>17 Q How did you rate them? What was the 18 difference?</p> <p>19 A It was just a classification issue.</p> <p>20 Q Okay. Was one cheaper than the other?</p> <p>21 A Yes, I believe it was a little bit cheaper.</p> <p>22 Q Which one was cheaper?</p> <p>23 A The one that they -- for themselves.</p> <p>24 Q Private?</p> <p>25 A Yes.</p> <p style="text-align: center;">19</p>	<p>1 or precluding coverage for a private carrier by the 2 addition of something like a for-hire exclusion or an 3 exclusion that would preclude coverage if the motor 4 carrier was acting in a for-hire capacity?</p> <p>5 MR. JOHANSEN: Object to the form.</p> <p>6 THE WITNESS: No, sir.</p> <p>7 Q (BY MR. McMICKLE) Have you ever heard or 8 seen of anything like that?</p> <p>9 A Not that I recall.</p> <p>10 Q Okay. Now, in this case with regard to this 11 policy -- and I'm talking about the NAICO policy from 12 February of '14 to whenever it was canceled. Maybe it 13 was the next one was canceled. But from February of 14 '14 to the -- February of '15 and the one that 15 preceded that; okay?</p> <p>16 A Okay.</p> <p>17 Q If you had known that Concrete, your named 18 insured, operated an interstate commerce as a private 19 motor carrier, would you have issued the policy?</p> <p>20 A No, sir.</p> <p>21 Q Okay. So whether they operated within a 22 normal radius of 150 miles wouldn't have meant 23 anything to you?</p> <p>24 A No.</p> <p>25 Q Okay. I show you what's been marked as</p> <p style="text-align: center;">21</p>

PR#119220

RAY, GLAETTA

2/28/2017

<p>1 words, there was some sort of agreement that NAICO 2 and Concrete reached that is either not memorialized 3 in here or improperly memorialized in here. I'm 4 referring again to the policy. What I want to know 5 is what is that -- what was that mutual mistake, to 6 your knowledge? 7 MR. JOHANSEN: Object to the form. 8 Foundation. 9 THE WITNESS: The mistake that we -- that I 10 see, I mean, from now -- look -- with the knowledge 11 that we have now is that there was some trucking 12 exposure that -- services that they were doing that we 13 were not aware of and was not the intent of writing 14 the policy. 15 Q (BY MR. McMICKLE) Would that be things 16 like Concrete operating an interstate commerce? 17 MR. JOHANSEN: Object to the form. 18 THE WITNESS: Could be. 19 Q (BY MR. McMICKLE) Okay. What I'm trying 20 to figure out is what was the agreement between 21 NAICO and Concrete that you contend that exists that 22 is not present in this policy or is improperly 23 memorialized in this policy? Can you tell me that? 24 MR. JOHANSEN: Object to the form. 25 Foundation.</p> <p style="text-align: center;">54</p>	<p>1 me that it does provide coverage for Concrete's 2 trucking operations? 3 A Well, it -- 4 MR. JOHANSEN: Object to the form. 5 Foundation. 6 THE WITNESS: Yes, it does. 7 Q (BY MR. McMICKLE) Okay. And you're 8 telling me that there's some sort of mistake or 9 mutual mistake between NAICO and Concrete that is 10 not included in the policy? 11 A Yes, sir. 12 Q And can you write those down, tell me what 13 the first mistake was? 14 MR. JOHANSEN: Object to the form. 15 Foundation. Go ahead. 16 THE WITNESS: After the fact that we did not 17 know when we wrote the policy, was that they did have 18 the trucking services. That's why we asked to cancel 19 it, or for them to move the coverage and cancel it. 20 It's also why we changed the symbols to 7, 8 and 9. 21 It was not the intent to cover all those trucking 22 operations. It's our understanding that was written 23 separately on a different policy and different 24 operation. 25 Q (BY MR. McMICKLE) Okay. Now, you're</p> <p style="text-align: center;">56</p>
<p>1 THE WITNESS: No. Because I don't really 2 know what you're asking me. 3 Q (BY MR. McMICKLE) Okay. Is there any 4 agreement that you're aware of between NAICO and 5 Concrete that is not present in the policy that is 6 Exhibit C -- Z, excuse me? 7 MR. JOHANSEN: Object to the form. 8 Foundation. 9 THE WITNESS: The only -- I mean, the 10 trucking -- the for-hire trucking exposure is not part 11 of that policy which is -- isn't a part of the 12 agreement. 13 Q (BY MR. McMICKLE) Would you agree with me 14 that, as written, this policy would cover really any 15 trucking operation of Concrete? 16 MR. JOHANSEN: Object to the form. 17 Foundation. 18 THE WITNESS: That's not what the intent 19 when we issued the policy was. We did not -- 20 Q (BY MR. McMICKLE) Go ahead. 21 A -- anticipate having any coverage for the 22 trucking exposure. 23 Q Okay. What I'm trying to say is "as is". 24 And I'm not trying to argue with you. I'm just trying 25 to say this policy, as written, would you agree with</p> <p style="text-align: center;">55</p>	<p>1 aware that NAICO specifically scheduled 2 tractor-trailers in its policy? 3 A Yes, sir. 4 Q Okay. And that in and of itself is not a 5 trucking operation, as far as you're concerned? 6 A No. We write lots of accounts like that. 7 Q Okay. To be a trucking operation, it would 8 have to include things like, say, crossing state 9 lines; is that right? 10 MR. JOHANSEN: Object to the form. 11 Foundation. 12 Q (BY MR. McMICKLE) I'm sorry. You can 13 answer. 14 A I don't really understand what you're 15 asking. Will you ask it a different way? 16 MR. McMICKLE: Will you read the question 17 back, please. 18 (Whereupon the record was read: To be a 19 trucking operation, it would have to include things 20 like crossing state lines; is that right?) 21 THE WITNESS: It could include that. 22 Q (BY MR. McMICKLE) Okay. What about 23 operating -- well, let me ask you this: Doug Murray 24 testified in his deposition that Concrete trucks 25 under Concrete authority, okay, went for numerous</p> <p style="text-align: center;">57</p>

PR#119220

RAY, GLAETTA

2/28/2017

<p>1 trips from Farmington, New Mexico, to Fort Bliss, 2 Texas, about 400 miles each way, give or take 3 20 miles; okay? He says in his deposition -- and 4 deposition says what it says, but I'm just repeating 5 it for you -- that he intended for that trucking 6 operation, if you will, to be covered under the 7 NAICO policy; okay? That's what he says. 8 A Okay. 9 Q Did you at NAICO intend for that type of 10 operation to be covered? 11 A No. That's not what we understood. 12 Q Okay. So there wasn't a mistake, if you 13 will, because on the one hand you've got Doug saying 14 he expected it to be discovered and on the other hand 15 you're saying you did not expect it to be covered? 16 A Yes, sir. 17 Q So would you agree that that's not a mutual 18 mistake between NAICO and Concrete? 19 A We -- 20 MR. JOHANSEN: Object to the form. 21 Foundation. 22 Q (BY MR. McMICKLE) I'm sorry? 23 A No. 24 Q You would agree with that statement? 25 A No, I wouldn't think it was -- I mean, it</p> <p style="text-align: center;">58</p>	<p>1 MR. McMICKLE: Oh, no. I tend to take that 2 position, but I've had it taken otherwise. So, okay, 3 we'll play by that rule. Thank you. 4 THE WITNESS: Thank you. 5 MR. JOHANSEN: Thank you. 6 (A recess was taken from 9:39 AM to 7 9:56 AM.) 8 Q (BY MR. McMICKLE) Ma'am, what is Exhibit 9 OO? 10 MR. JOHANSEN: Look through that. 11 THE WITNESS: It's just an email from the 12 agent binding the February 9th, '13 property, GL, 13 auto, crime and umbrella policies. 14 Q (BY MR. McMICKLE) Okay. 15 A Applications attached. And some signed 16 terrorism forms, UM forms, a contractor's 17 supplemental. 18 Q So this is an email with attached documents 19 from the agent at Woods to Nichole Cottingham? 20 A From her to Anita. 21 Q Marshall, okay. I'm sorry. 22 A Yes -- yes, sir. 23 Q And it looks like the email is on February 24 12th and you're binding coverage -- you're backdating 25 coverage for three days; is that right?</p> <p style="text-align: center;">60</p>
<p>1 was a mistake, yes. I mean, whether it's mutual, I 2 don't know. That's a fact. 3 Q Okay. Does it appear to you that it's not a 4 mutual mistake? 5 MR. JOHANSEN: Object to the form. 6 Foundation. 7 Q (BY MR. McMICKLE) You can still answer. 8 A Well, he understood it one way and we 9 understood it a different way. 10 Q Okay. 11 A So I wouldn't think that was mutual. 12 Q All right. 13 MR. JOHANSEN: We've been at it more than an 14 hour. Let's take a quick break. 15 MR. McMICKLE: So how do we -- I go all 16 around the country and some lawyers say that when a 17 lawyer talks to a witness in between a -- in a break 18 in a deposition that that's not a privileged 19 conversation. I don't care how we handle this, but I 20 just want it to be consistent. 21 MR. JOHANSEN: No. 22 MR. McMICKLE: Do you -- 23 MR. JOHANSEN: Ms. Ray's my client. 24 Everything that we discuss is protected by 25 attorney/client privilege.</p> <p style="text-align: center;">59</p>	<p>1 A Yes, sir. 2 Q It that typical at NAICO? 3 A It is at times. The -- sometimes the agents 4 just call us and say, "We haven't got all the 5 documents together to formally send an email, but we 6 want to renew the policy so" -- 7 Q Okay. 8 A So it's common. 9 Q I'm not sure if this was a renewal or a new 10 policy. Do you know? 11 A I believe it was a renewal. I'm pretty sure 12 it was a renewal. 13 Q Okay. And, like, if you'll look at the next 14 page. 15 A No, it wasn't. Maybe it wasn't. This may 16 have been a new policy. 17 Q I think it was the new one. 18 A I think this is the first year that we wrote 19 it. It was, I believe. 20 Q Okay. If you'll look at page 2 of that 21 document. 22 A (Witness complies.) 23 Q Looks like the applicant is CAB Concrete 24 with a mailing address at ABC Septic Systems? 25 A Yes, sir.</p> <p style="text-align: center;">61</p>

PR#119220

RAY, GLAETTA

2/28/2017

<p>1 MR. JOHANSEN: Object to the form.</p> <p>2 Foundation.</p> <p>3 THE WITNESS: It was not our intent.</p> <p>4 Q (BY MR. McMICKLE) I understand what your</p> <p>5 intent was, but what I'm -- your lawyers have made</p> <p>6 an allegation to a Court, and I'm trying to find out</p> <p>7 if that allocation is true. Okay? I understand</p> <p>8 what your intent was, but the allegation talks about</p> <p>9 the intent of both NAICO and Concrete. Okay?</p> <p>10 A I don't know what the intent of Concrete</p> <p>11 was.</p> <p>12 Q Okay. And is that because there was no sort</p> <p>13 of mutual understanding between NAICO and Concrete?</p> <p>14 MR. JOHANSEN: Object to the form.</p> <p>15 Foundation.</p> <p>16 THE WITNESS: The information that we had</p> <p>17 was that they were doing local radius; and then after</p> <p>18 the loss control, that they were going into -- hauling</p> <p>19 into other states.</p> <p>20 Q (BY MR. McMICKLE) So did NAICO, to your</p> <p>21 knowledge, know anything about ABC Septic when it</p> <p>22 underwrote the policy at issue?</p> <p>23 A No.</p> <p>24 Q Go to paragraph 50, if you don't mind, on</p> <p>25 page 718.</p> <p style="text-align: center;">78</p>	<p>1 neither NAICO nor Concrete contemplated that NAICO</p> <p>2 would insure Concrete for any long-haul trucking</p> <p>3 activities?</p> <p>4 A It was not our -- no, we did not intend to</p> <p>5 cover long-haul trucking, no.</p> <p>6 Q Okay. Okay. Paragraph 51 says, "When it</p> <p>7 issued the contract with NAICO, ABC MFG believed ABC</p> <p>8 Septic was a separate entity." Do you see that?</p> <p>9 A Yes, sir.</p> <p>10 Q What did NAICO believe at the time?</p> <p>11 A Well, we weren't aware of the Septic, but we</p> <p>12 did believe that they had a separate operation and</p> <p>13 legal entity.</p> <p>14 Q So from the text we saw in the email about</p> <p>15 separate operation, you concluded that that meant a</p> <p>16 separate legal entity?</p> <p>17 A Yes, sir.</p> <p>18 Q Okay. Go to paragraph 54, please.</p> <p>19 A (Witness complies.)</p> <p>20 Q When the policy was issued or at least when</p> <p>21 the loss control survey came in --</p> <p>22 A Uh-huh.</p> <p>23 Q -- did NAICO intend to insure Concrete for</p> <p>24 interstate trucking operations?</p> <p>25 A There were some interstate operations, yes.</p> <p style="text-align: center;">80</p>
<p>1 A (Witness complies.)</p> <p>2 Q If I were to take out the word "for-hire"</p> <p>3 out of the allegation in paragraph 50, would that be a</p> <p>4 false statement?</p> <p>5 MR. JOHANSEN: Object to the form.</p> <p>6 THE WITNESS: No.</p> <p>7 Q (BY MR. McMICKLE) Okay. What about it</p> <p>8 would be false?</p> <p>9 MR. JOHANSEN: She said no to your question.</p> <p>10 THE WITNESS: It would not be false.</p> <p>11 Q (BY MR. McMICKLE) Oh, all right. Maybe I</p> <p>12 asked a bad question. So if I took out the word</p> <p>13 "for-hire" and it read, "Neither NAICO nor ABC</p> <p>14 Concrete contemplated that NAICO would insure ABC</p> <p>15 Manufacturing for any long-haul trucking</p> <p>16 activities," do you think that would be a correct</p> <p>17 statement?</p> <p>18 MR. JOHANSEN: Object to the form.</p> <p>19 Foundation.</p> <p>20 THE WITNESS: No, I don't -- I don't think</p> <p>21 that's -- that would be -- that would still be a</p> <p>22 correct statement.</p> <p>23 Q (BY MR. McMICKLE) So, in other words, if</p> <p>24 I were to say this: Is it true that at the time</p> <p>25 this policy was issued, it is your contention that</p> <p style="text-align: center;">79</p>	<p>1 Q Okay. So the first sentence in paragraph 54</p> <p>2 of the complaint is not entirely true; is that</p> <p>3 correct?</p> <p>4 A It was not for hire.</p> <p>5 Q Okay. I'm sorry. You need to answer that</p> <p>6 question. Then you can explain.</p> <p>7 A Yes.</p> <p>8 Q Is it correct to say that paragraph -- or</p> <p>9 the first sentence of paragraph 54 as stated is not</p> <p>10 entirely correct?</p> <p>11 MR. JOHANSEN: Object to the form.</p> <p>12 Foundation.</p> <p>13 THE WITNESS: Yes.</p> <p>14 Q (BY MR. McMICKLE) Okay. So what you're</p> <p>15 telling me is that -- and I've heard you say this</p> <p>16 several times -- that what really mattered to you</p> <p>17 was for-hire?</p> <p>18 A Okay.</p> <p>19 Q What to you was the material difference in</p> <p>20 risk between, say, a for-hire motor carrier and a</p> <p>21 private motor carrier?</p> <p>22 A Well, the for-hire is one that they travel</p> <p>23 all over the country hauling all different kinds of</p> <p>24 merchandise.</p> <p>25 Q Okay. Any other material distinctions</p> <p style="text-align: center;">81</p>

PR#119220

RAY, GLAETTA

2/28/2017

<p>1 between for-hire and private motor carriers?</p> <p>2 A A private carrier could do the same. I</p> <p>3 mean, they could go all over the country, as well.</p> <p>4 Q So what I'm trying to ask you is -- I'd like</p> <p>5 for you to describe to the Court what you as the</p> <p>6 underwriting manager believe to be the material</p> <p>7 distinctions, if any, from a risk perspective.</p> <p>8 A Well, the long-haul exposure going all over</p> <p>9 the country was potential --</p> <p>10 Q Okay.</p> <p>11 A -- and the for-hire.</p> <p>12 Q Well, so we're on a comparison and contrast</p> <p>13 endeavor at the moment. And I want you to tell me</p> <p>14 what it is about for-hire motor carriage that presents</p> <p>15 a greater risk, if you will, to NAICO than private</p> <p>16 motor carriage.</p> <p>17 A Well, for-hire, you're -- they're hiring a</p> <p>18 lot of drivers that are not employees of the company</p> <p>19 and, in our opinion -- or my opinion, creates a larger</p> <p>20 risk to insure.</p> <p>21 Q So you're saying that you believe that</p> <p>22 for-hire carriers only hire owner/operators and that</p> <p>23 private motor carriers don't hire owner/operators?</p> <p>24 A No, they could.</p> <p>25 Q Okay. So tell me -- again, we're trying</p> <p style="text-align: center;">82</p>	<p>1 A No.</p> <p>2 Q Okay. So you indicate in paragraph 54 --</p> <p>3 and we've talked about the first sentence, but Had</p> <p>4 you -- and the second sentence says had you known the</p> <p>5 true facts, you would have issued a specifically</p> <p>6 described auto policy; right? Do you see that?</p> <p>7 A Yes, I see it.</p> <p>8 Q Now, specifically described autos in a</p> <p>9 business auto form is just symbol 7; right?</p> <p>10 A Yes, sir.</p> <p>11 Q So what NAICO's telling the Court there is</p> <p>12 that, "Had we known the true facts, we would have</p> <p>13 issued a symbol 7 policy"?</p> <p>14 A Right.</p> <p>15 Q Okay. And it says you would not have</p> <p>16 included vehicles involved in for-hire, long-haul</p> <p>17 trucking.</p> <p>18 A Correct.</p> <p>19 Q How would you do that?</p> <p>20 A How would you insure them?</p> <p>21 Q How would you not have included vehicles</p> <p>22 involved in for-hire, long-haul trucking?</p> <p>23 A Well, they would have been specifically</p> <p>24 described on the policy by symbol 7.</p> <p>25 Q Okay. Well, this insured told you in an</p> <p style="text-align: center;">84</p>
<p>1 to -- I just need to understand what NAICO believes</p> <p>2 the material distinctions, if any, might be between a</p> <p>3 for-hire motor carrier and a private motor carrier.</p> <p>4 MR. JOHANSEN: Object to the form.</p> <p>5 Foundation.</p> <p>6 Q (BY MR. McMICKLE) And we've kind of</p> <p>7 started a couple and then retracted. And so I</p> <p>8 just -- what I need to know is I need a list of all</p> <p>9 material distinctions between a for-hire motor</p> <p>10 carrier and a private motor carrier.</p> <p>11 MR. JOHANSEN: Object to the form.</p> <p>12 Foundation.</p> <p>13 Q (BY MR. McMICKLE) From a risk</p> <p>14 perspective.</p> <p>15 A A risk perspective? Well, the distinct -- I</p> <p>16 don't -- I don't really know what you're looking for</p> <p>17 here, but our largest -- our largest concern is the</p> <p>18 amount of travel over the road.</p> <p>19 Q Like the number of miles?</p> <p>20 A Yes, the number of miles traveled.</p> <p>21 Q Do you have any reason to believe that</p> <p>22 private carriers haul or log less miles than for-hire</p> <p>23 motor carriers?</p> <p>24 A I don't know.</p> <p>25 Q Okay. Anything else?</p> <p style="text-align: center;">83</p>	<p>1 application that it wanted you to insure tractors and</p> <p>2 trailers that were capable of operating over the road;</p> <p>3 correct?</p> <p>4 A Yes.</p> <p>5 Q If the insured had asked you to schedule</p> <p>6 those trucks, wouldn't they be covered in any</p> <p>7 situation whether or not they were for-hire or</p> <p>8 private?</p> <p>9 A I believe there's some definitions in the</p> <p>10 "Who is an insured" that would exempt for-hire.</p> <p>11 Q Okay. Let's look at those. Exhibit Z is</p> <p>12 that policy.</p> <p>13 A Oh.</p> <p>14 Q Are you talking about the "Who is an</p> <p>15 insured" in the business auto thing?</p> <p>16 A Yes, sir.</p> <p>17 Q Did you find it there? Is there anything in</p> <p>18 there about for-hire?</p> <p>19 A No, but it does stipulate that anyone using</p> <p>20 a covered auto you own, the owner is -- except the</p> <p>21 owner of anyone else who you hire or borrow covered</p> <p>22 auto.</p> <p>23 Q Okay. Now, you, which would be Concrete, is</p> <p>24 always an insured for a covered auto; correct?</p> <p>25 A Yes.</p> <p style="text-align: center;">85</p>

PR#119220

RAY, GLAETTA

2/28/2017

<p>1 answer to that question?</p> <p>2 A I haven't seen anything.</p> <p>3 Q Okay.</p> <p>4 A We never got a request or a copy of the</p> <p>5 authority so I don't know that we did.</p> <p>6 Q Okay. So what I'm hearing you say is that</p> <p>7 she was looking into the authority question. You're</p> <p>8 just not sure what questions she asked and what</p> <p>9 information she received?</p> <p>10 A Well, we never received anything requesting</p> <p>11 the filing.</p> <p>12 Q Okay. Is it correct to say that from what</p> <p>13 you're seeing here that you believe that Anita</p> <p>14 Marshall was looking into Concrete's authority?</p> <p>15 A Yes.</p> <p>16 Q Okay. And she was asking questions about</p> <p>17 it?</p> <p>18 A She asked the question, yes.</p> <p>19 Q Okay. And do you know who she would have</p> <p>20 asked the question to?</p> <p>21 MR. JOHANSEN: Object to the form.</p> <p>22 Foundation.</p> <p>23 THE WITNESS: I don't know. Whoever she was</p> <p>24 working with at the agency.</p> <p>25 Q (BY MR. McMICKLE) But you expect that she</p> <p style="text-align: center;">98</p>	<p>1 controls the interpretation of your policy?</p> <p>2 MR. JOHANSEN: Object to the form.</p> <p>3 Foundation.</p> <p>4 THE WITNESS: No.</p> <p>5 Q (BY MR. McMICKLE) If Doug Murray signed</p> <p>6 the application for this policy the first time after</p> <p>7 the effective date of the policy, would that have</p> <p>8 been a breach of NAICO's protocols?</p> <p>9 A No.</p> <p>10 MR. JOHANSEN: Object to the form.</p> <p>11 Foundation.</p> <p>12 MR. McMICKLE: Okay. All right. I think</p> <p>13 I'm done. Give me about three minutes, if you will,</p> <p>14 to sort of go back through some notes. I don't want</p> <p>15 you to sit here and have to watch me do that.</p> <p>16 THE WITNESS: Okay.</p> <p>17 MR. JOHANSEN: Yeah. Let's take a break,</p> <p>18 then.</p> <p>19 (A recess was taken from 10:50 AM to</p> <p>20 10:58 AM.)</p> <p>21 Q (BY MR. McMICKLE) I show you what's been</p> <p>22 marked as Exhibit PP. And I just want you to look</p> <p>23 at page 8.</p> <p>24 A (Witness complies.)</p> <p>25 Q Do you see number 20 there?</p> <p style="text-align: center;">100</p>
<p>1 would have asked somebody at Woods?</p> <p>2 A Yes, sir.</p> <p>3 MR. JOHANSEN: Object to the form.</p> <p>4 Foundation.</p> <p>5 Q (BY MR. McMICKLE) Okay. And do you have</p> <p>6 any -- is there any information in what we've looked</p> <p>7 at that would suggest what the answer was?</p> <p>8 MR. JOHANSEN: Object to the form.</p> <p>9 Foundation.</p> <p>10 THE WITNESS: No.</p> <p>11 MR. McMICKLE: I'll give you a continuing</p> <p>12 objection to everything.</p> <p>13 MR. JOHANSEN: I know. But thank you.</p> <p>14 Q (BY MR. McMICKLE) When did -- I'll ask</p> <p>15 that later of someone else. There was an affidavit</p> <p>16 that was sent to Concrete after this loss occurred</p> <p>17 trying to get Mr. Murray to sign an affidavit that</p> <p>18 said certain things. Do you have any familiarity</p> <p>19 with that affidavit?</p> <p>20 A No, sir.</p> <p>21 Q Did you draft it or participate in a</p> <p>22 discussion about drafting it?</p> <p>23 A No.</p> <p>24 Q Okay. Is it your position that what the</p> <p>25 insured intends to be covered under your policy</p> <p style="text-align: center;">99</p>	<p>1 A Yes.</p> <p>2 Q Read that if you will.</p> <p>3 A "Admit that" --</p> <p>4 Q You don't have it read it out loud.</p> <p>5 A Oh, okay.</p> <p>6 Q So what this is is I asked -- request to</p> <p>7 admit to your company -- and so that request is my</p> <p>8 request and I'm just saying, hey, admit or deny</p> <p>9 whatever's there.</p> <p>10 A Okay.</p> <p>11 Q And it was denied. What I need to know from</p> <p>12 you is as you sit here today, do you believe that the</p> <p>13 denial of that request was correct?</p> <p>14 A Yes.</p> <p>15 Q Okay. So NAICO had no intention of covering</p> <p>16 trucks operating under ABC's authority as a private</p> <p>17 interstate carrier?</p> <p>18 A Correct.</p> <p>19 Q I'm going to show you Exhibit QQ. Can you</p> <p>20 tell me what that is?</p> <p>21 A It's a rate comparison from one year to</p> <p>22 another and premiums -- premium comparison --</p> <p>23 Q Okay. And so --</p> <p>24 A -- for the different vehicles.</p> <p>25 Q -- it looks like there she's -- or</p> <p style="text-align: center;">101</p>

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

NATIONAL AMERICAN INSURANCE COMPANY,

Plaintiff,

-vs-

No. 1:15-CV-01169 KG-KBM

ABC CONCRETE MFG. CO., INC.;
ABC CONCRETE MFG. CO., INC. d/b/a
ABC SEPTIC SYSTEMS, INC.,
NICHOLAS MONTANO;
SCOTTSDALE INSURANCE COMPANY;
and NATIONAL CASUALTY COMPANY,

Defendants.

DEPOSITION OF DOUGLAS MURRAY
October 25, 2016
8:52 a.m.
105 North Orchard Avenue
Farmington, New Mexico

PURSUANT TO THE NEW MEXICO RULES OF CIVIL
PROCEDURE, this deposition was:

TAKEN BY: MR. BRETT C. EATON
ATTORNEY FOR THE PLAINTIFF

REPORTED BY: CAROLYN B. McKEE, CSR, RPR, CM - NO. 173
518 County Road 4990
Bloomfield, New Mexico 87413

<p style="text-align: right;">Page 34</p> <p>1 Q. And when I say "your products", do you understand 2 me to mean ABC Concrete Manufacturing? 3 A. Yes, sir. 4 Q. Did ABC Septic ship other products in long haul 5 or interstate transportation -- 6 A. Yes, sir. 7 Q. -- aside from ABC Concrete? 8 A. Yes, sir. 9 Q. Okay. 10 MR. BURNS: Can we take a break for just one 11 moment? 12 MR. EATON: Sure. 13 (Break taken from 9:31 a.m. to 9:33 a.m.) 14 A. Okay, I'm ready. 15 Q. (By Mr. Eaton) We're done with E for now. 16 A. Okay. 17 (Deposition Exhibits F and G 18 were marked for identification.) 19 Q. I'm going to hand you two. The first one we'll 20 mark as Exhibit F is the Commercial Insurance 21 Application dated 10/24/2012. 22 And then the second one, which we'll mark as 23 Exhibit G, is the insurance application -- Commercial 24 Insurance Application dated November 8th, 2012. 25 A. Okay, sir.</p>	<p style="text-align: right;">Page 36</p> <p>1 name of the applicant there? 2 A. ABC Concrete Manufacturing Company, Incorporated. 3 Q. Then under the FEIN or social security number, 4 what number's listed? 5 A. 85-0456807. 6 Q. Do you know why two different tax numbers are 7 listed on these forms? 8 A. Because they're two separate companies. 9 Q. So is it your understanding -- 10 MR. McMICKLE: Where's that other one? 11 MR. EATON: Did I give you both? 12 (A discussion was held off the record.) 13 Q. Were you paying taxes -- in 2012, were you paying 14 taxes for ABC Septic Systems? 15 A. You need to clarify the question. 16 MR. McMICKLE: Separate tax returns. 17 Q. Separate tax returns, thank you. Did you have 18 separate tax returns for ABC Septic Systems -- 19 A. No. 20 Q. -- and ABC Concrete Manufacturing in 2012? 21 A. No. 22 Q. Were you filing a single tax return for both 23 companies? 24 A. I believe -- yes, I believe so. 25 Q. Based on these documents here, does it appear</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. Looking at Exhibit F, who's identified in the 2 applicant information? And just for the record, this is 3 Woods Bates number 0734. 4 A. ABC Septic Systems, Incorporated. Then under 5 that is ABC Concrete, Incorporated. 6 Q. And again, do you know why both were listed in 7 this case? 8 A. No, sir. 9 Q. And would this -- again at the top under the 10 agency, who is the agent listed in the agency box? 11 A. Woods Insurance Service, Incorporated. 12 Q. Then moving over to the right, it's Carrier. 13 Who's the carrier listed in that box? 14 A. Cochrane & Company. 15 Q. Under -- about two boxes underneath it says: 16 Indicate - Sections Attached". Which two sections were 17 checked off in that section? 18 A. Business auto and transportation/motor truck 19 cargo. 20 Q. Underneath the applicant information, it has the 21 FEIN or social security number. What number is listed 22 there? 23 A. 012186177. 24 Q. Now jumping over to Exhibit G, who's the 25 applicant? Under the applicant information, what's the</p>	<p style="text-align: right;">Page 37</p> <p>1 that there were two separate tax IDs? 2 A. Yes. 3 Q. And one of them was for ABC Septic Systems and 4 one was for ABC Concrete Manufacturing? 5 A. That is correct. 6 Q. I just want to compare the two insurance 7 coverage -- or types of insurance coverage that were 8 being sought in each. 9 In Exhibit F, Woods Bates number 734, you've 10 identified you were seeking business auto and 11 transportation/motor truck cargo. 12 What were you seeking for ABC Concrete 13 Manufacturing Company on Exhibit G, which is Bates 14 number Woods 677? 15 A. Business auto, commercial general liability, 16 equipment floaters, and property insurance. 17 Q. Is there a reason why you were no longer seeking 18 transportation/motor truck cargo? 19 A. ABC Concrete does not have the authority to 20 back-haul. 21 Q. When you say they don't have the authority, what 22 do you mean? 23 A. We have -- we are a one-way haul under ABC 24 Concrete. We can haul our own products only. 25 Q. And where would the authority come from to allow</p>

10 (Pages 34 to 37)

Page 66

1 (Deposition Exhibit O
2 was marked for identification.)
3 **Q. Mr. Murray, do you remember seeing this --**
4 **getting this letter from Jimmy Mileham at NAICO?**
5 A. No, sir, I don't remember it.
6 **Q. Okay. Is it possible that you did get this**
7 **letter, you just don't recall it?**
8 A. Yes, sir, it's possible.
9 **Q. Okay. I knew there was something in here I**
10 **wanted to go over with you and I've since forgotten it.**
11 **I'm sorry.**
12 **What I'll purport to you is that this is a letter**
13 **memorializing the March 11, 2013, conversation you had**
14 **with Mr. Mileham about the operations of ABC Concrete.**
15 **Do you recall having any kind of conversation**
16 **with somebody at NAICO over the phone about that time**
17 **about your operations?**
18 A. I don't, but --
19 **Q. Okay. Well, this was produced to us by NAICO. I**
20 **wasn't there in the conversation. All I can tell you is**
21 **that there's a document in their files indicating they**
22 **sent a letter to you that's there in front of you with**
23 **some attachments.**
24 **Would you flip to page 3102 there at the back or**
25 **on the bottom right.**

Page 67

1 A. Okay.
2 **Q. It says on number 1.4 there, do you see that?**
3 A. Yes, sir, I do.
4 **Q. It says Normal Radius of Operations is 150 miles?**
5 A. That's correct.
6 **Q. Okay. And earlier today you said that you told**
7 **Woods and that you told NAICO that your radius would be,**
8 **for ABC Concrete, would be about 150 miles?**
9 MR. EATON: Objection, form.
10 A. That is not correct.
11 **Q. Okay. How is that not correct?**
12 A. I did not inform NAICO. I informed Woods solely.
13 **Q. Okay. Understood. And you expected Woods to**
14 **communicate that to NAICO; is that correct?**
15 A. I expected my insurance policy to be the way I
16 wanted it.
17 **Q. Okay. And at least as far as this document's**
18 **concerned, it appears that you communicated to**
19 **Mr. Mileham that your normal radius of operations was**
20 **150 miles.**
21 A. That has always been my verbal radius to our
22 insurance people.
23 **Q. Okay. And it also says here "Policyholder," ABC**
24 **Concrete, "is located in Farmington, New Mexico, and**
25 **will travel to Colorado, Arizona, Utah."**

Page 68

1 A. That is correct.
2 **Q. Okay. So when we talk about ABC Concrete hauling**
3 **products, those are products that you manufacture or**
4 **that you sell to third parties? Government entities,**
5 **things like that?**
6 A. That we manufacture, sir.
7 **Q. Yeah.**
8 A. Solely manufacture.
9 **Q. Right.**
10 A. Okay.
11 **Q. So, and in the trucking world, what I -- I will**
12 **call somebody a private hauler and a for-hire hauler.**
13 A. That's correct.
14 **Q. You want to be -- ABC Concrete, it's my**
15 **understanding, was a private hauler.**
16 A. Correct.
17 **Q. Okay. And they would haul things across state**
18 **lines and interstate commerce, but it was all -- it was**
19 **limited to ABC Concrete's manufactured product.**
20 A. That is correct.
21 **Q. Okay. And that is what you communicated to**
22 **Woods, and that's what you expected to be covered under**
23 **the NAICO policy; is that correct?**
24 A. 150-mile radius, ABC Concrete's products --
25 **Q. All right.**

Page 69

1 A. -- is correct.
2 **Q. And you indicated that you also had told them**
3 **that there would be occasional stepping out beyond the**
4 **150-mile radius?**
5 A. That is correct.
6 **Q. And you expected, when you had one of these**
7 **occasional stepping out incidences of hauling ABC**
8 **Concrete product, that that would be covered under the**
9 **NAICO policy.**
10 A. That is correct.
11 **Q. Okay. So if you sell goods -- what's a customer**
12 **that's about 200 miles away that you've sold products**
13 **to? It can be 250, somewhere in that range.**
14 A. (No response.)
15 **Q. Or what's a city that's 250 miles?**
16 A. Albuquerque. You know, if you go on the north
17 side of -- or south side of Albuquerque, you're barely
18 outside that radius.
19 **Q. Yeah. What about Durango or --**
20 A. Durango's 50 miles.
21 **Q. Okay.**
22 A. Now you're talking a radius.
23 **Q. I understand.**
24 A. Not a direct route. So --
25 **Q. Well, that's a good question. When you say**

18 (Pages 66 to 69)

Page 70

1 radius in this context, are you talking about an air
2 radius or a driving radius?
3 A. I put a point in Farmington, take a circumference
4 of 150 miles and draw a circle. That is a radius to me.
5 Q. Okay. And some people, I would call that an air
6 radius, but I understand exactly what you're saying,
7 sir.
8 What's a city that you deliver ABC Concrete
9 products to, say, 150 miles away in either Utah,
10 Arizona, or Colorado?
11 A. We go on the reservation. Possibly Kayenta would
12 fall within that.
13 Q. Okay.
14 A. Just outside of Kayenta, we may step outside 20
15 miles and you're outside that radius.
16 Q. Okay.
17 A. As a for instance.
18 Q. And you would still expect that to be covered
19 under the NAICO policy.
20 A. We would, sir.
21 Q. Okay. And in essence, we've seen some examples
22 in these documents where, and I think you even said,
23 you're a one-way hauler. And when you said that, you're
24 referring to ABC Concrete; is that right?
25 A. Correct.

Page 71

1 Q. And what you mean by that is that you would haul
2 your manufactured products, yours being ABC Concrete,
3 from Farmington to wherever the destination was. Might
4 be the locations that you just mentioned.
5 And then you said you needed authority, which I
6 assumed was DOT, FMCSA authority, to act as a for hire
7 carrier on the way back.
8 MR. EATON: Objection, form.
9 Q. Is that correct?
10 A. No, sir, that's not.
11 Q. Tell me how that's not correct.
12 A. If it's specifically ABC Concrete, we would send
13 it on another truck. We would haul it to that
14 destination and return empty.
15 Q. Well, let's look at a couple things. Like
16 Exhibit F, do you have the original Exhibit F there?
17 A. Yes, I'm sure. Yes, sir.
18 Q. Look there at the bottom. Can I call you Doug?
19 A. Yes, you can.
20 Q. All right.
21 A. Yes, sir.
22 Q. It says "For hire trucking company, own product
23 out, 99 percent."
24 A. Correct.
25 Q. "Commercial/government brokers hire for loads

Page 72

1 coming back."
2 A. Correct.
3 Q. So if you send a truck, one of your ABC -- or an
4 ABC Concrete truck out to deliver your product to
5 wherever the destination might be.
6 A. Okay.
7 Q. Okay? Just a hypothetical. Back in 2012, would
8 you typically look for a back-haul to put freight on
9 that truck to get it back to Farmington?
10 MR. EATON: Objection, form.
11 A. You've asked me two separate questions.
12 Q. Okay.
13 A. When we were talking about the 150-mile radius,
14 we were referring to one. Now you're referring to
15 another one. So which answer do you want?
16 Q. Let me ask you this. You talk about
17 government/commercial brokers hire for loads coming
18 back.
19 A. Correct.
20 Q. That is what I would typically call a back-haul.
21 A. That's correct.
22 Q. All right. So is it correct to say that there
23 were instances where you would ship product out for ABC
24 Concrete and then look for a for-hire load, if you will,
25 for a back-haul back to Farmington or at least close to

Page 73

1 this area?
2 A. Not to my knowledge.
3 Q. Okay. So that never happened?
4 A. Not to my knowledge. They may have got their
5 tickets messed up, but their logs should have said
6 Septic going out, Septic coming back.
7 Q. Okay. So you would agree with me that you, when
8 you're hauling ABC Concrete products, you would be
9 hauling under private authority given to ABC Concrete
10 from the FMCSA.
11 A. Depending on where it's going.
12 Q. Okay. Well, the private authority given to you
13 by the FMCSA to ABC Concrete allowed you to go to all 50
14 states, didn't it?
15 A. Correct.
16 Q. Or 48 let's say.
17 A. Correct. But we also had that authority way
18 before we ever started doing back-hauls. We had ABC's
19 authority for a long time before we had the Septic
20 authority.
21 Q. I understand.
22 A. Okay.
23 Q. I'm not, I'm not --
24 A. So the dividing line is do I need money for them
25 trucks to come 150 miles is not advantageous for us to

19 (Pages 70 to 73)

Page 94

1 A. Twelve, sir.
2 **Q. So if one would just do rough math, 150 to 200**
3 **loads went for Fort Bliss approximately 395 miles away**
4 **from Farmington in 2014?**
5 **A. Yes, sir.** And, you know, to be honest, we didn't
6 care who covered it. We just knew we weren't getting
7 loads coming home. We had plenty of insurance covered
8 under either one.
9 So our guys were usually, they would log it
10 probably under ABC Concrete because we weren't getting
11 logs coming home. I mean loads coming home, I'm sorry.
12 **Q. Okay.**
13 A. And a lot of our drivers were registered under
14 both companies.
15 **Q. What does that mean, "registered"?**
16 A. Well, you know, you have to keep separate DOT
17 files, so...
18 **Q. I was gonna get to that. I call them the DQ**
19 **file?**
20 A. I don't know what they are. We call them
21 driver's file.
22 **Q. So driver file, DQ file, whatever you want to**
23 **call it. You had, like for example, for Montano, the**
24 **driver involved in this accident, did you have a DQ file**
25 **for him for Concrete and Septic?**

Page 95

1 A. That one I'm not sure. Okay? I do not know.
2 **Q. But typically, would you have --**
3 A. Not all of them.
4 **Q. All right.**
5 A. No, sir.
6 **Q. What percentage of the drivers? 50 percent?**
7 A. I know I was. I know I was on both of them. In
8 '14, I'm not sure we had a lot of drivers in '14. I
9 just don't remember.
10 **Q. So you understand -- let me tell you what I**
11 **understand NAICO is trying to do in this lawsuit.**
12 **They're asking a court to rewrite this policy**
13 **issued to Concrete to not cover any shipments**
14 **transported by ABC Concrete beyond a 50-mile radius.**
15 MR. EATON: Objection, form.
16 **Q. All right? We'll go through the Complaint and**
17 **we'll do that. All right?**
18 **Let's say that there's a loss that you don't know**
19 **about that comes up for one of these 200 trips to Fort**
20 **Bliss.**
21 **Are you okay with NAICO not covering that loss by**
22 **virtue of this lawsuit and reforming the policy?**
23 MR. EATON: Objection, form.
24 MR. BURNS: You can answer it.
25 A. No. We pay our insurance in two separate

Page 96

1 entities. We expect our insurance companies to cover
2 them.
3 **Q. So in 2015, were the operations of ABC Concrete**
4 **similar to the operations of ABC Concrete in 2014 in**
5 **terms of the use of trucks and those sort of things?**
6 A. Yes, sir.
7 **Q. Okay. So in 2015, you reported 10,000 -- or**
8 **excuse me, 210,000 miles to the DOT for ABC Concrete; is**
9 **that correct?**
10 A. That's what the form says.
11 **Q. And back in '13, you reported 55,000 miles for**
12 **ABC Concrete Mfg Company, Inc., d/b/a ABC Septic Systems**
13 **in Exhibit S.**
14 A. Okay.
15 **Q. Would the mileage that was reported in '14 and**
16 **'15 for, let's call it Septic, would that have been**
17 **roughly the same, to your knowledge?**
18 A. Same amount of miles?
19 **Q. Yeah.**
20 A. I don't know.
21 **Q. Roughly 55,000? To the best of your**
22 **recollection.**
23 MR. EATON: Objection, form.
24 A. To the best I know. I'm not sure of that one,
25 sir.

Page 97

1 **Q. Okay. Fair enough. So would you look at Exhibit**
2 **T with me.**
3 A. Okay.
4 **Q. And if you'll look at the last -- well, the**
5 **second to last page.**
6 A. Yes, sir.
7 **Q. It looks to me like -- well, I'll tell you what**
8 **that is. That's an inspection history page.**
9 A. Okay.
10 **Q. Okay? And we're asking the FMCSA to send us the**
11 **2014, so we'll have that later. But this goes back to**
12 **August of '15. Okay?**
13 **And, I mean, you know generally what DOT**
14 **inspections are.**
15 A. Yes.
16 **Q. And do you agree with me that this is a listing**
17 **of different DOT inspections of eight tractors and**
18 **trailers being operated under the private authority of**
19 **ABC Concrete?**
20 A. That I cannot say it's under the private
21 authority.
22 **Q. Okay.**
23 A. But that's what this is.
24 **Q. Would you agree that it's part of the report for**
25 **ABC Concrete?**

25 (Pages 94 to 97)

Page 98

1 A. Yes, sir.
 2 **Q. Okay. And if you look at the bottom there,**
 3 **8/19/15, do you see that?**
 4 A. Yes, sir.
 5 **Q. There's a truck there that was stopped one, two,**
 6 **three, four times in about a one-month period; three**
 7 **times in Arizona and one time in New Mexico. Do you**
 8 **recognize that license plate number?**
 9 A. No. But I'm sure it's one of ours, sir.
 10 (Deposition Exhibit U
 11 was marked for identification.)
 12 **Q. Okay. Now, I'm gonna show you a police report**
 13 **for this case which is Exhibit U.**
 14 **And if you'll look, Doug, right here, this is**
 15 **where it talks about ABC Concrete.**
 16 A. Yes, sir.
 17 **Q. It says 2007 Freightliner tractor green and it's**
 18 **got a license number?**
 19 A. Yes, sir.
 20 **Q. Okay. Does that appear to be the same license**
 21 **number that's referenced on that page of Exhibit T that**
 22 **we were just referencing?**
 23 A. It does, sir.
 24 **Q. Okay. So it's correct to say that the tractor**
 25 **involved in this accident that occurred on -- what's the**

Page 100

1 inspection, they would look at ABC Concrete's name on
 2 the side and not the DOT number that it was leased to.
 3 So they would put ABC Concrete on there instead
 4 of ABC Septic like they should have. Same thing in this
 5 report of your crash.
 6 **Q. Well, let's just stay there a second. It says**
 7 **Owner's Name, ABC Concrete Manufacturing Company.**
 8 A. Mm-hmm.
 9 **Q. It's correct to say that ABC Concrete**
 10 **Manufacturing Company, Inc., owned the tractor and**
 11 **trailer.**
 12 A. That is correct.
 13 **Q. Did they own the trailer as well? ABC Concrete.**
 14 A. Yes, sir. Yes, sir.
 15 **Q. Okay. Did ABC Septic Systems, Inc., to the**
 16 **extent it is a separate entity from ABC Concrete, own**
 17 **any property, whether it's equipment or real property?**
 18 A. No, sir.
 19 **Q. Everything that was owned and utilized by ABC**
 20 **Septic and ABC Concrete in '13-14 time frame would have**
 21 **been owned by ABC Concrete.**
 22 **A. Owned by ABC Concrete, leased to ABC Septic.**
 23 **Q. Gotcha. Okay. So you're telling me that you're**
 24 **not sure about these DOT inspection reports in Exhibit T**
 25 **because sometimes the investigating officer, the DOT**

Page 99

1 **date of the accident? August 5 of 2014? Is that right?**
 2 MR. EATON: I think it's the 7th.
 3 A. 8/5 is what this -- the report date.
 4 **Q. Yeah, I think it is 8/7. I think you're right.**
 5 **But the accident in California involving Mr. Montano.**
 6 **Okay?**
 7 **Would you agree with me that the tractor that he**
 8 **was operating in California on the August 7th, 2014,**
 9 **accident was also a tractor that was operating at least**
 10 **in August of 2015 on behalf of ABC Concrete under its**
 11 **private authority in Arizona?**
 12 A. No, sir.
 13 **Q. What's wrong with that statement?**
 14 A. I can't say. Even though the inspection says so,
 15 I can't say for sure it was.
 16 **Q. Okay. Do you have any reason to believe that**
 17 **this SAFER report data that we're looking at is false?**
 18 A. I have a reason to believe it's incorrect.
 19 **Q. Okay. And is the reason that the tractor**
 20 **involved in this accident would have never been used to**
 21 **transport ABC Manufacturer's products under ABC**
 22 **Concrete's private authority?**
 23 A. No, that is not true, sir.
 24 **Q. Okay. Well, tell me what the reason is.**
 25 A. A lot of times when the DOT would do their

Page 101

1 **officer, would see "ABC Concrete" on the truck, but not**
 2 **look at the DOT number?**
 3 A. That is correct.
 4 **Q. Okay. And did you train your drivers to tell the**
 5 **DOT officers "Hey, I'm hauling this under Septic's**
 6 **authority instead of Concrete's authority"?**
 7 A. Their -- that's correct. Their logs would not
 8 match. That's when they'd have to pull out their lease
 9 and start showing it to them.
 10 **Q. Okay.**
 11 **(Deposition Exhibit V**
 12 **was marked for identification.)**
 13 **Q. I'm going to show you Exhibit V as in "Victor".**
 14 A. Okay.
 15 **Q. This is a Truckers Application from ABC Septic**
 16 **Systems to National Casualty Company.**
 17 A. Yes, sir.
 18 **Q. And it says here on number 4 "Has there been any**
 19 **change in the nature of operations, ownership,**
 20 **management, or the name of the operation during the last**
 21 **five years?"**
 22 A. Okay.
 23 **Q. And it says "No." Is that an accurate statement?**
 24 A. As best of my knowledge, sir.
 25 **Q. Okay. Flip to the next page.**

26 (Pages 98 to 101)

Page 114

1 A. I'm not sure.
2 **Q. Okay.**
3 A. Okay?
4 **Q. Paragraph 28 says ABC Manufacturing failed to**
5 **disclose to NAICO that ABC Manufacturing was registered**
6 **with the USDOT, and then it has a DOT number which is**
7 **the Septic DOT number. Did you fail to disclose that to**
8 **NAICO?**
9 A. What's the necessity? I didn't realize we had to
10 disclose anything.
11 **Q. Okay. Would you agree with me that if NAICO had**
12 **just taken a look at the SAFER system, that they would**
13 **have figured this out?**
14 MR. EATON: Objection, form.
15 A. That's the agency's responsibility, not mine.
16 **Q. Okay.**
17 A. I mean I didn't -- all right.
18 **Q. Would you agree with me that the trips to Fort**
19 **Bliss, the 395 miles each way, I mean would you call**
20 **that interstate hauling?**
21 A. I would, sir.
22 **Q. You would?**
23 A. It's across state lines.
24 **Q. Okay. And would you also call that long haul**
25 **trucking or hauling?**

Page 115

1 A. It could be either way.
2 **Q. Okay. And I think we can agree that it would not**
3 **be for hire carriage.**
4 A. That is correct.
5 **Q. All right. Paragraph 33 --**
6 MR. BURNS: You can go on.
7 (Mr. Burns leaves the deposition room briefly)
8 **Q. Hang on. So in paragraph 28 they say you never**
9 **told them about Septic.**
10 A. Okay.
11 **Q. Paragraph 33, they say it was the intent of ABC**
12 **Manufacturing that Septic would pay for its own**
13 **automobile liability coverage. Do you see that?**
14 A. I see it.
15 **Q. If NAICO did not know anything about Septic, how**
16 **could there be some sort of mutual understanding between**
17 **you and NAICO that ABC Septic would pay for its own**
18 **liability coverage?**
19 MR. EATON: Objection, form.
20 **Q. That seems impossible, doesn't it?**
21 MR. EATON: Objection, form.
22 A. It does to me.
23 **Q. All right. And would you agree with me that the**
24 **tractor operated by Mr. Montano at the time of the**
25 **August 7, 2014, accident, that it's at least possible**

Page 116

1 **that he may have transported with that tractor or that**
2 **trailer an ABC Manufactured load that was hauled under**
3 **an ABC -- under ABC Concrete's authority at some time**
4 **around the time of the accident?**
5 MR. EATON: Objection, form.
6 A. I can't answer that. I'd have to refer to his
7 logs.
8 **Q. Okay. Would you have his logs for, say, all of**
9 **2014?**
10 A. He only worked for us for a short time, sir.
11 **Q. Okay. Would you have his logs for the entire**
12 **time period that he worked for you?**
13 A. I think we've produced them already.
14 **Q. Okay.**
15 A. If not, we should have them.
16 **Q. Okay.**
17 A. '14, '15, '16.
18 **Q. What is your log retention policy?**
19 A. One year.
20 **Q. Okay. And after a year passes, do you throw them**
21 **away?**
22 A. (Witness nods head.) That's all we're required
23 by law.
24 **Q. All right. When you were asked in the tort suit,**
25 **the liability lawsuit, to produce logs, did you produce**

Page 117

1 **everything you had?**
2 A. We produced what they asked us for. When I say
3 "they", what the lady attorney out of California asked
4 us for at that time, before the suit was settled.
5 **Q. Okay.**
6 MR. McMICKLE: I'll send you an e-mail or --
7 just if you can ask. Or obviously if it's something
8 different, I'd appreciate you getting it to me.
9 MR. BURNS: Okay.
10 **Q. So in other words, you would agree with me that**
11 **there were at least instances in 2014 where trucks that**
12 **were leased to Septic hauled goods for ABC Concrete**
13 **under ABC Concrete's private authority in that radius.**
14 A. Yes.
15 MR. EATON: Objection, form.
16 **Q. I'm sorry?**
17 A. Yes.
18 **Q. That would have had to have happened?**
19 A. I'm sure it did.
20 **Q. Okay. Flip to page 6 of Exhibit Y. Look at**
21 **number 40. Tell me, do you have any knowledge of that**
22 **or is that true?**
23 A. That I'm not sure of, sir. I'm not sure what
24 this is saying really, number 40.
25 **Q. Did you understand that your NAICO policy covered**

30 (Pages 114 to 117)

Page 122

1 MR. McMICKLE: No, that's fine. I mean, you
2 asked and I'm just sort of telling you why I guess I
3 think that's important. I think they've got it
4 backwards. But anyway, so I'll leave it alone.

5 **Q. (By Mr. McMickle) So let's look to paragraph 54,**
6 **It says "Both NAICO and ABC Manufacturing labored under**
7 **the same erroneous conception that the NAICO policy**
8 **would not be insuring for-hire long haul or interstate**
9 **trucking operations for ABC Manufacturing."**

10 **And you've already told me today that you**
11 **expected that NAICO would cover interstate trips taken**
12 **by ABC Concrete transporting ABC Concrete product,**
13 **correct?**

14 A. That's correct.

15 **Q. Okay. So this statement that both NAICO and ABC**
16 **were laboring under the same erroneous conception, that**
17 **is a false statement.**

18 A. Yes. We're 35 miles to the Durango, Colorado,
19 border. It doesn't make sense I would cover -- write
20 insurance like that.

21 **Q. It says in the second sentence in paragraph 54**
22 **"Had NAICO known the true facts, it would have issued a**
23 **policy of insurance that provided insurance only for**
24 **specifically described autos, and would not have**
25 **included vehicles involved in for-hire long haul**

Page 123

1 **trucking." Did anybody ever tell you that?**

2 A. No.

3 **Q. So they say that they would have issued a new**
4 **policy that would not have included vehicles involved in**
5 **for-hire long haul trucking.**

6 A. They may have issued it, but that don't mean I
7 would have bought it.

8 **Q. Okay.**

9 A. That's why we've got free enterprise.

10 (Deposition Exhibit AA
11 was marked for identification.)

12 **Q. I'm going to show you what's been marked AA. And**
13 **I'm gonna indicate that I believe these to be Mr.**
14 **Montano's logs for whatever dates are stated there.**

15 A. Okay.

16 **Q. Does that appear to be accurate?**

17 A. Yes, sir.

18 **Q. All right. Now, you see there at the top on the**
19 **first page, and it carries on, it says "ABC" and then**
20 **something's --**

21 A. Right.

22 **Q. -- struck out.**

23 A. Mm-hmm.

24 **Q. Is it "Concrete" that's struck out?**

25 A. Yes, sir.

Page 124

1 **Q. All right. And you see it says #110 and #112 for**
2 **the equipment?**

3 A. Yes, sir.

4 **Q. Would that have been the tractor and the trailer**
5 **referenced in the police report?**

6 A. Yes, sir.

7 **Q. All right. And for example, on the trips where**
8 **ABC Concrete drivers would haul under ABC Concrete's**
9 **authority to and from Fort Bliss in 2014, would those**
10 **drivers use logs like what we're seeing in Exhibit AA?**

11 A. No, sir. These are logs I gave him. These are
12 my personal logs.

13 **Q. Okay. Would a driver that's driving across state**
14 **lines -- I assume Fort Bliss is across state lines.**

15 A. It is.

16 **Q. Is that Colorado?**

17 A. No. It's New Mex -- Texas.

18 MR. BURNS: El Paso.

19 A. El Paso.

20 **Q. Okay. Wouldn't the drivers have needed logs to**
21 **get across state lines?**

22 A. Yes, sir.

23 **Q. Okay. Would they have used logs that look**
24 **generally like what's in Exhibit AA?**

25 A. Generally like it. It would not have had this

Page 125

1 already imprinted. "ABC" and all this information would
2 not have been imprinted. These are my personal logs
3 that I had done for me. He didn't have any logs, so I
4 gave him these.

5 **Q. Okay. You recall that for this specific time**
6 **frame?**

7 A. No one else uses these but me, sir.

8 **Q. Okay.**

9 A. These are my logs.

10 **Q. And when you say they're your logs, the ones with**
11 **the scratched out "Concrete"?**

12 A. No. No. I had these special printed for me.

13 **Q. Just so it's all on one page?**

14 A. This is special printed in there for me, "ABC
15 Concrete". All of this is special printed for me. This
16 is not handwritten. These are my logs --

17 **Q. Gotcha. Understand.**

18 A. -- that were made for me.

19 **Q. But other logs similarly compliant with the**
20 **federal regs would have been used by ABC Concrete**
21 **drivers going to and from Fort Bliss.**

22 A. We require long form, sir. This is a long form
23 log.

24 **Q. All right.**

25 A. Three copies.

32 (Pages 122 to 125)

Page 126

1 **Q. And ABC Concrete would have endeavored to satisfy**
2 **any other applicable federal regulations for those Fort**
3 **Bliss shipments; is that right?**

4 A. Yes, sir.

5 **Q. All right. So there was a time where NAICO and**
6 **Woods asked you to sign an affidavit regarding this**
7 **policy. Do you recall that?**

8 A. There's some stuff that came to my office, sir.
9 I don't recall specifically. I know there was some I
10 would not sign.

11 (Deposition Exhibit BB

12 was marked for identification.)

13 **Q. Right. I'm going to show you Exhibit BB.**

14 A. Okay.

15 **Q. Now it looks like this is a letter to somebody**
16 **named Jackie at Woods Insurance Services. And the**
17 **second page is an affidavit and then some e-mails that**
18 **follow.**

19 A. Okay.

20 **Q. Okay? So for your purposes, I'm just going to**
21 **have you look at the affidavit. Okay?**

22 **Is that the affidavit that you recall someone**
23 **sending to you?**

24 A. Yes, sir.

25 **Q. All right. And that's the affidavit you refused**

Page 127

1 **to sign.**

2 A. My specific words said "You could stick this
3 where the sun doesn't shine." That's my specific words.

4 **Q. I like that. So, and the reason that you -- or**
5 **at least one of the reasons that you didn't sign this**
6 **affidavit was that you believed it would take NAICO out**
7 **of the picture completely.**

8 A. I believed two things. Number one is that they
9 were trying to get off of something that they should
10 have addressed before they ever wrote this policy.

11 Number two is, is that now they were trying to
12 get out of it after the fact.

13 And number three is, we didn't look at the
14 insurance company that a way as much as we did at Woods.
15 They should have told us what was going on. They were
16 our representative.

17 (Deposition Exhibit CC

18 was marked for identification.)

19 **Q. I'm going to send you Exhibit CC, or give you**
20 **Exhibit CC. We're gonna come back to the affidavit.**

21 **But Exhibit CC, at least the first few pages, it**
22 **looks to me like that's somebody at NAICO named James**
23 **Malone is trying to get you to sign the affidavit.**

24 A. Mm-hmm. He called me.

25 **Q. And there's conversation that's depicted here.**

Page 128

1 **I'm not gonna go through it all. But at the end or at**
2 **the top, at least what I've been provided, says "This**
3 **letter takes your company out of the picture**
4 **completely."**

5 A. What? That's, that's -- I think that's what I
6 wrote.

7 **Q. Yeah, that's what you wrote.**

8 A. Right. I cannot sign this letter.

9 **Q. All right. So you were telling somebody at NAICO**
10 **"I'm not signing this affidavit because it takes your**
11 **company out of the picture completely."**

12 A. I don't know what was done in-between here, but
13 that was my -- that's coming from my iPad it says right
14 there.

15 **Q. Right. All right. And you recall saying**
16 **something like that?**

17 A. I wasn't very polite with him.

18 **Q. So over the phone is where the "sunshine" thing**
19 **came out?**

20 A. Yes, sir.

21 **Q. All right.**

22 A. Looks like it was two separate e-mails.

23 **Q. Okay.**

24 MR. McMICKLE: All right. Why don't we take
25 a, just a couple minute break. And then what I'd like

Page 129

1 to do is -- I'll bet you're going to have a few more
2 questions.

3 MR. EATON: Yes.

4 MR. McMICKLE: I'm going to try and figure
5 out what I have to do right now and then, you know, we
6 can hopefully speed through, be another 20, 30 minutes
7 at the most.

8 MR. BURNS: Okay.

9 THE WITNESS: Okay.

10 MR. McMICKLE: I hope so. Lawyers always
11 say that.

12 (Break taken from 12:14 p.m. to 12:48 p.m.)

13 (Deposition Exhibit DD

14 was marked for identification.)

15 **Q. (By Mr. McMickle) All right. So I've given you**
16 **Exhibit DD. And is that a letter you recall receiving**
17 **from somebody at Woods?**

18 A. They probably sent this over or sent it to me in
19 the mail. It looks like the same one that --

20 **Q. Do you recall any conversations with Edie**
21 **Darrell?**

22 A. I don't. But --

23 **Q. Do you recall any conversations about this**
24 **affidavit with anybody at Woods other than the "sun**
25 **doesn't shine" thing we talked about?**

33 (Pages 126 to 129)

<p style="text-align: right;">Page 142</p> <p>1 MR. McMICKLE: Let me see what you've got.</p> <p>2 A. Exhibit C?</p> <p>3 Q. Exhibit C, yes, sir.</p> <p>4 A. Okay.</p> <p>5 Q. Under paragraph 6, this is on page 2 of the</p> <p>6 lease, paragraph 6a, it states "Customer has exclusive</p> <p>7 possession and control of equipment." Is that an</p> <p>8 accurate reading?</p> <p>9 A. Yes.</p> <p>10 Q. And I'm looking on page 1. Is ABC Septic Systems</p> <p>11 listed as the customer for this lease?</p> <p>12 A. Yes.</p> <p>13 Q. So even if a vehicle that was owned by</p> <p>14 ABC Concrete was leased to ABC Septic, while ABC Septic</p> <p>15 was operating that truck, according to the lease, they</p> <p>16 were in exclusive possession and control of that</p> <p>17 tractor; is that correct?</p> <p>18 MR. McMICKLE: Object to the form. Thanks.</p> <p>19 A. According to the lease, yes.</p> <p>20 Q. I'm going to jump to Exhibit Y. This is the</p> <p>21 Complaint that was filed in this case.</p> <p>22 On page 7, we're going to look at paragraph 54.</p> <p>23 And you had stated that --</p> <p>24 MR. BURNS: Do you mean the Amended</p> <p>25 Complaint?</p>	<p style="text-align: right;">Page 144</p> <p>1 the truck was owned by ABC Concrete. And this is my</p> <p>2 understanding after all this has been going on.</p> <p>3 The truck's owned by ABC Concrete. ABC Septic</p> <p>4 had its own insurance. I'm the owner of both. I own</p> <p>5 the Concrete division; I own the Septic division.</p> <p>6 So who's the insurance here to cover. Does it</p> <p>7 cover me? Then both of you have a liability.</p> <p>8 Q. But your understanding is that NAICO was only</p> <p>9 providing coverage for ABC Manufacturing, correct?</p> <p>10 A. Correct.</p> <p>11 Q. And ABC Manufacturing was not authorized under</p> <p>12 the DOT to provide for-hire --</p> <p>13 A. That's correct.</p> <p>14 Q. -- transport. And we discussed today, this is</p> <p>15 something I learned today, was that ABC did perform some</p> <p>16 we'll call it long haul trucking beyond 150 miles as</p> <p>17 long as it was just ABC Manufacturing's product.</p> <p>18 A. That's correct.</p> <p>19 Q. So your intent was that NAICO would only be</p> <p>20 insuring ABC Concrete Manufacturing when it was shipping</p> <p>21 its own product when discussing long haul shipping.</p> <p>22 A. Okay. You're really confusing me.</p> <p>23 Q. Okay. So I'm trying to make -- sorry. I'm just</p> <p>24 trying to clarify --</p> <p>25 A. I know what you're trying to get at. My intent</p>
<p style="text-align: right;">Page 143</p> <p>1 MR. EATON: Yeah. This was the first --</p> <p>2 yeah, this is the First Amended Complaint.</p> <p>3 MR. BURNS: Okay.</p> <p>4 Q. (By Mr. Eaton) Paragraph 54. You had indicated</p> <p>5 that this statement is inaccurate. And I just want to</p> <p>6 kind of break it down real quick.</p> <p>7 So ABC Concrete was a private hauler, correct?</p> <p>8 A. Yes.</p> <p>9 Q. It was not authorized to provide for-hire</p> <p>10 transport?</p> <p>11 A. That is correct.</p> <p>12 Q. And NAICO was just -- or NAICO only provided</p> <p>13 coverage for ABC Concrete. That's your understanding,</p> <p>14 correct?</p> <p>15 A. (No response.)</p> <p>16 Q. That NAICO only provided coverage to ABC</p> <p>17 Concrete?</p> <p>18 A. That is correct.</p> <p>19 Q. So would it be accurate to say that the NAICO</p> <p>20 policy would not be insuring for-hire long haul trucking</p> <p>21 operations for which ABC Manufacturing was not</p> <p>22 authorized to perform?</p> <p>23 A. Not totally.</p> <p>24 Q. Which part of that is inaccurate?</p> <p>25 A. The truck was leased to ABC Concrete -- I mean</p>	<p style="text-align: right;">Page 145</p> <p>1 is to cover our companies. That's my job. Your jobs</p> <p>2 are to break it down now. Okay?</p> <p>3 So as long as my trucks were covered and my</p> <p>4 people were covered and I was covered, I'm happy.</p> <p>5 Q. So would you agree that it was your intent that</p> <p>6 National Casualty Company did provide insurance for ABC</p> <p>7 Septic for its long haul for-hire or even for if it was</p> <p>8 hauling for ABC Manufacturing?</p> <p>9 A. As long as it was listed under that, yes. As</p> <p>10 long as it was on their logs hauled that way.</p> <p>11 Q. So it was your intent that ABC Septic was covered</p> <p>12 under that policy.</p> <p>13 A. That was my intent.</p> <p>14 Q. But your intent was also that NAICO was only</p> <p>15 insuring ABC Manufacturing.</p> <p>16 A. Insuring my trucks, yes.</p> <p>17 Q. When you say your trucks, what do you mean?</p> <p>18 A. Anything that ABC Concrete owns. As long as</p> <p>19 they're listed on the policy.</p> <p>20 Why don't you ask me that question another way</p> <p>21 and you'll get the right answer.</p> <p>22 Q. I mean all day you've testified that you'd only</p> <p>23 intended NAICO to insure ABC Manufacturing.</p> <p>24 A. Correct.</p> <p>25 MR. McMICKLE: Object to the form. Just go</p>

10/24/2016

SAFER Web - Company Snapshot ABC CONCRETE MANUFACTURING CO INC

☒ USDOT Number ☐ MC/MX Number ☐ Name

Enter Value: 340457

Company Snapshot
ABC CONCRETE MANUFACTURING CO INC
 USDOT Number: 340457

[ID/Operations](#) | [Inspections/Crashes In US](#) | [Inspections/Crashes In Canada](#) | [Safety Rating](#)

Carriers: If you would like to update the following ID/Operations information, please complete and submit form MCS-150 which can be obtained online or from your State FMCSA office. If you would like to challenge the accuracy of your company's safety data, you can do so using FMCSA's DataQs system.

Other Information for this Carrier

☒ SMS Results

☒ Licensing & Insurance

Carrier and other users: FMCSA provides the Company Safety Profile (CSP) to motor carriers and the general public interested in obtaining greater detail on a particular motor carrier's safety performance than what is captured in the Company Snapshot. To obtain a CSP please visit the CSP order page or call (800)832-5660 or (703)280-4001 (Fee Required).

For help on the explanation of individual data fields, click on any field name or for help of a general nature go to SAFER General Help.

The information below reflects the content of the FMCSA management information systems as of 10/23/2016.

Entity Type:	CARRIER																																			
Operating Status:	ACTIVE	Out of Service Date:	None																																	
Legal Name:	ABC CONCRETE MANUFACTURING CO INC																																			
DBA Name:																																				
Physical Address:	1004 S LAKE ST FARMINGTON, NM 87401																																			
Phone:	(505) 325-8289																																			
Mailing Address:	1004 S LAKE ST FARMINGTON, NM 87401																																			
USDOT Number:	340457	State Carrier ID Number:																																		
MC/MX/FF Number(s):		DUNS Number:	61-275-608																																	
Power Units:	7	Drivers:	8																																	
MCS-150 Form Date:	04/26/2016	MCS-150 Mileage (Year):	210,000 (2015)																																	
Operation Classification:																																				
<table border="0"> <tr> <td>Auth. For Hire</td> <td>Priv. Pass. (Non-business)</td> <td>State Gov't</td> </tr> <tr> <td>Exempt For Hire</td> <td></td> <td>Local Gov't</td> </tr> <tr> <td><input checked="" type="checkbox"/> Private (Property)</td> <td>Migrant</td> <td>Indian Nation</td> </tr> <tr> <td>Priv. Pass. (Business)</td> <td>U.S. Mail</td> <td></td> </tr> <tr> <td></td> <td>Fed. Gov't</td> <td></td> </tr> </table>				Auth. For Hire	Priv. Pass. (Non-business)	State Gov't	Exempt For Hire		Local Gov't	<input checked="" type="checkbox"/> Private (Property)	Migrant	Indian Nation	Priv. Pass. (Business)	U.S. Mail			Fed. Gov't																			
Auth. For Hire	Priv. Pass. (Non-business)	State Gov't																																		
Exempt For Hire		Local Gov't																																		
<input checked="" type="checkbox"/> Private (Property)	Migrant	Indian Nation																																		
Priv. Pass. (Business)	U.S. Mail																																			
	Fed. Gov't																																			
Carrier Operation:																																				
<table border="0"> <tr> <td><input checked="" type="checkbox"/> Interstate</td> <td>Intrastate Only (HM)</td> <td>Intrastate Only (Non-HM)</td> </tr> </table>				<input checked="" type="checkbox"/> Interstate	Intrastate Only (HM)	Intrastate Only (Non-HM)																														
<input checked="" type="checkbox"/> Interstate	Intrastate Only (HM)	Intrastate Only (Non-HM)																																		
Cargo Carried:																																				
<table border="0"> <tr> <td>General Freight</td> <td>Liquids/Gases</td> <td>Chemicals</td> </tr> <tr> <td>Household Goods</td> <td>Intermodal Cont.</td> <td>Commodities Dry Bulk</td> </tr> <tr> <td>Metal: sheets, coils, rolls</td> <td>Passengers</td> <td>Refrigerated Food</td> </tr> <tr> <td>Motor Vehicles</td> <td>Oilfield</td> <td>Beverages</td> </tr> <tr> <td>Drive/Tow away</td> <td>Equipment</td> <td>Paper Products</td> </tr> <tr> <td>Logs, Poles, Beams, Lumber</td> <td>Livestock</td> <td>Utilities</td> </tr> <tr> <td>Building Materials</td> <td>Grain, Feed, Hay</td> <td>Agricultural/Farm Supplies</td> </tr> <tr> <td>Mobile Homes</td> <td>Coal/Coke</td> <td>Construction</td> </tr> <tr> <td>Machinery, Large Objects</td> <td>Meat</td> <td>Water Well</td> </tr> <tr> <td>Fresh Produce</td> <td>Garbage/Refuse</td> <td><input checked="" type="checkbox"/> METAL AND CONCRE</td> </tr> <tr> <td></td> <td>US Mail</td> <td></td> </tr> </table>				General Freight	Liquids/Gases	Chemicals	Household Goods	Intermodal Cont.	Commodities Dry Bulk	Metal: sheets, coils, rolls	Passengers	Refrigerated Food	Motor Vehicles	Oilfield	Beverages	Drive/Tow away	Equipment	Paper Products	Logs, Poles, Beams, Lumber	Livestock	Utilities	Building Materials	Grain, Feed, Hay	Agricultural/Farm Supplies	Mobile Homes	Coal/Coke	Construction	Machinery, Large Objects	Meat	Water Well	Fresh Produce	Garbage/Refuse	<input checked="" type="checkbox"/> METAL AND CONCRE		US Mail	
General Freight	Liquids/Gases	Chemicals																																		
Household Goods	Intermodal Cont.	Commodities Dry Bulk																																		
Metal: sheets, coils, rolls	Passengers	Refrigerated Food																																		
Motor Vehicles	Oilfield	Beverages																																		
Drive/Tow away	Equipment	Paper Products																																		
Logs, Poles, Beams, Lumber	Livestock	Utilities																																		
Building Materials	Grain, Feed, Hay	Agricultural/Farm Supplies																																		
Mobile Homes	Coal/Coke	Construction																																		
Machinery, Large Objects	Meat	Water Well																																		
Fresh Produce	Garbage/Refuse	<input checked="" type="checkbox"/> METAL AND CONCRE																																		
	US Mail																																			

Murray

T

MCKEE REPORTING, INC.

[ID/Operations](#) | [Inspections/Crashes In US](#) | [Inspections/Crashes In Canada](#) | [Safety Rating](#)

10/24/2016

SAFER Web - Company Snapshot ABC CONCRETE MANUFACTURING CO INC

US Inspection results for 24 months prior to: 10/23/2016

Total Inspections: 19
Total IEP Inspections: 0

Note: Total inspections may be less than the sum of vehicle, driver, and hazmat inspections. Go to [Inspections Help](#) for further information.

Inspections:				
Inspection Type	Vehicle	Driver	Hazmat	IEP
Inspections	8	19	0	0
Out of Service	2	0	0	0
Out of Service %	25%	0%	%	0%
Natl Average % (2014-2015)	20.34%	4.96%	3.91%	N/A

Crashes reported to FMCSA by states for 24 months prior to: 10/23/2016

Note: Crashes listed represent a motor carrier's involvement in reportable crashes, without any determination as to responsibility.

Crashes:				
Type	Fatal	Injury	Tow	Total
Crashes	0	0	0	0

[ID/Operations](#) | [Inspections/Crashes In US](#) | [Inspections/Crashes In Canada](#) | [Safety Rating](#)

Canadian Inspection results for 24 months prior to: 10/23/2016

Total Inspections: 0

Note: Total inspections may be less than the sum of vehicle and driver inspections. Go to [Inspections Help](#) for further information.

Inspections:		
Inspection Type	Vehicle	Driver
Inspections	0	0
Out of Service	0	0
Out of Service %	0%	0%

Crashes results for 24 months prior to: 10/23/2016

Note: Crashes listed represent a motor carrier's involvement in reportable crashes, without any determination as to responsibility.

Crashes:				
Type	Fatal	Injury	Tow	Total
Crashes	0	0	0	0

[ID/Operations](#) | [Inspections/Crashes In US](#) | [Inspections/Crashes In Canada](#) | [Safety Rating](#)

The Federal safety rating does not necessarily reflect the safety of the carrier when operating in intrastate commerce.

Carrier Safety Rating:

The rating below is current as of: 10/23/2016

Review Information:

Rating Date:	04/16/2012	Review Date:	01/26/2012
Rating:	Conditional	Type:	Compliance Review

SAFER Home | Feedback | Privacy Policy | USA.gov | Freedom of Information Act (FOIA) | Accessibility | OIG Hotline | Web Policies and Important Links | Plug-ins

Federal Motor Carrier Safety Administration
1200 New Jersey Avenue SE, Washington, DC 20590 • 1-800-832-5660 • TTY: 1-800-877-8339 • Field Office Contacts

10/24/2016

Safety Measurement System - Complete SMS Profile (U.S. DOT# 340457)



ABC CONCRETE MANUFACTURING CO INC

U.S. DOT#: 340457

Address: 1004 S LAKE ST
FARMINGTON, NM 87401

Number of Vehicles: 7

Number of Drivers: 8

Number of Inspections: 19

Safety Rating & OOS Rates

(As of 10/23/2016 updated daily
from SAFER)

CONDITIONAL

(Rating Date: 04/16/2012)

Out of Service Rates

Type	OOS %	National Avg %
Vehicle	25.0	20.3
Driver	0.0	5.0
Hazmat		3.9

Licensing and Insurance

(As of 10/23/2016 updated hourly
from L&I)

Active For-Hire Authority	
Type	Yes/No MC#/MX#
Property	No
Passenger	No
Household Goods	No
Broker	No

U.S. DOT# 340457 has no current for-hire operating authority with FMCSA.

See how the proposed enhancements impact carrier results. Visit the SMS Preview Website

BASIC Status (Public Property Carrier View) ?

Behavior Analysis & Safety Improvement Categories (BASICS)

Based on a 24-month record ending September 23, 2016



Unsafe Driving

Crash Indicator
Not PublicHours-of-
Service
ComplianceVehicle
MaintenanceControlled
Substances
and AlcoholNot Public
Hazardous
Materials
Compliance

Driver Fitness

On-Road Performance

0
MeasureNOT
PUBLIC0.51
Measure8.62
Measure0
MeasureNOT
PUBLIC0
Measure

On-Road Performance Detail

Driver
Inspections with
Unsafe Driving
Violations: 0Safety Event
Group: No Safety
Event Grouping

NOT

Driver
Inspections: 19
with HOS
Compliance
Violations: 3
Safety Event
Group: 11-20Vehicle
Inspections: 8
with Vehicle
Maint.
Violations: 7
Safety Event
Group: 5-10Driver
Inspections: 19
with
Drugs/Alcohol
Violations: 0
Safety Event
Group: No

NOT

Driver
Inspections: 19
with Driver
Fitness
Violations: 0
Safety Event
Group: 11-20

EXHIBIT 4

10/24/2016

Avg. PU x UF:
10.5

PUBLIC

relevant driver
inspectionsrelevant vehicle
inspectionsSafety Event
Grouping

PUBLIC

relevant driver
inspectionsSegment:
Straight Carrier

Investigation Results

No Acute/Critical Violations Discovered	N/A	No Acute/Critical Violations Discovered	No Acute/Critical Violations Discovered	No Acute/Critical Violations Discovered	NOT PUBLIC	No Acute/Critical Violations Discovered
---	-----	--	---	---	---------------	---

Select a BASIC icon above to get details, or view your [Complete SMS Profile](#).

VIOLATION SUMMARY

Violations: 24

Violations	Description	# Violations	# OOS Violations	Violation Severity Weight	BASIC
395.3A2- PROP	Driving beyond 14 hour duty period (Property carrying vehicle)	1	0	7	HOS Compliance
395.8	Driver's record of duty status (general/form and manner)	2	0	1	HOS Compliance
392.2WC	Wheel (Mud) Flaps missing or defective	1	0	1	Vehicle Maint.
393.19	Inoperative/defective hazard warning lamp	1	0	6	Vehicle Maint.
393.201(a)	Frame cracked / loose / sagging / broken	1	1	2	Vehicle Maint.
393.207(a)	Axle positioning parts defective/missing	1	1	7	Vehicle Maint.
393.45	Brake tubing and hose adequacy	1	0	4	Vehicle Maint.
393.45UV	Brake Tubing and Hose Adequacy Under Vehicle	1	1	4	Vehicle Maint.
393.47(e)	Clamp/Roto-Chamber type brake(s) out of adjustment	1	0	4	Vehicle Maint.
393.48(a)	Inoperative/defective brakes	1	1	4	Vehicle Maint.
393.53(b)	Automatic brake adjuster CMV manufactured on or after 10/20/1994 - air brake	1	0	4	Vehicle Maint.
393.60(c)	Damaged or discolored windshield	1	0	1	Vehicle Maint.
393.75(a)	Flat tire or fabric exposed	1	1	8	Vehicle Maint.
393.75(c)	Tire — other tread depth less than 2/32 of inch	1	0	8	Vehicle Maint.
393.83(g)	Exhaust leak under truck cab and/or sleeper	1	0	1	Vehicle Maint.
393.84	Inadequate floor condition	1	0	2	Vehicle Maint.
393.9	Inoperative required lamps	1	0	2	Vehicle Maint.
396.3(a)(1)	Inspection/repair and maintenance parts and accessories	1	0	2	Vehicle Maint.

10/24/2016

Safety Measurement System - Complete SMS Profile (U.S. DOT# 340457)

3A1B Brakes (general)			Vehicle			Measure	
Inspection Date	Number	State	Plate Number	Plate State	Type	Severity Weight (SW)	Time Weight (TiW)
396.3A1B Universal Joint Loose / Broken / Missing Component					1		
396.5(b) Oil and/or grease leak					3	0	3
							Vehicle Maint.

INSPECTION HISTORY

Total Inspections: 19

Report			Vehicle			Measure	
Inspection Date	Number	State	Plate Number	Plate State	Type	Severity Weight (SW)	Time Weight (TiW)
3/30/2016	NM3606100934	NM	IRH9768	NM	TRUCK TRACTOR		3
2/25/2016	AZ0YFC000255	AZ	IRH9768	NM	TRUCK TRACTOR		2
HOS Compliance Violation: 395.8 Record of Duty Status violation (general/form and manner)						1	
Vehicle Maint. Violation: 393.9 Inoperable Required Lamp						2	
2/18/2016	NM3249108049	NM	IRJ7508	NM	TRUCK TRACTOR		2
2/12/2016	NM3248104100	NM	IRH9768	NM	TRUCK TRACTOR		2
Vehicle Maint. Violation: 393.19 Inoperative/Defective Hazard Warning Lamp						6	
2/10/2016	AZ0Y0X000103	AZ	IRH9768	NM	TRUCK TRACTOR		2
Vehicle Maint. Violation: 392.2WC Wheel (Mud) Flaps missing or defective						1	
Vehicle Maint. Violation: 393.60(c) Damaged or discolored windshield						1	
1/25/2016	NM3643101254	NM	WD111453	NM	TRUCK TRACTOR		2
11/30/2015	NM3670101027	NM	IRH9768	NM	TRUCK TRACTOR		2
Vehicle Maint. Violation: 393.45 Brake tubing and hose adequacy						4	
11/24/2015	NM3743100784	NM	IRJ7508	NM	TRUCK TRACTOR		2
11/20/2015	AZ0YEM000867	AZ	IRH9768	NM	TRUCK TRACTOR		2
Vehicle Maint. Violation: 396.3A1B Brakes (general) Explain:						4	
Vehicle Maint. Violation: 396.5(b) Oil and/or grease leak						3	
10/28/2015	NM3231107321	NM	IRH9768	NM	TRUCK TRACTOR		2
Vehicle Maint. Violation: 393.47(e) Clamp or Roto type brake out-of-adjustment						4	
Vehicle Maint. Violation: 393.45UV Brake Tubing and Hose Adequacy Under Vehicle (OOS)						4 + 2 (OOS)	
Vehicle Maint. Violation: 393.207(a) Axle positioning parts defective/missing (OOS)						7 + 2 (OOS)	
Vehicle Maint. Violation: 393.201(a) Frame cracked / loose / sagging / broken (OOS)						2 + 2 (OOS)	
Vehicle Maint. Violation: 393.48(a) Inoperative/defective brakes (OOS)						4 + 2 (OOS)	
Vehicle Maint. Violation: 396.5(b) Oil and/or grease leak						3	
Vehicle Maint. Violation: 393.84 Inadequate floor condition						2	
Vehicle Maint. Violation: 393.83(g) Exhaust leak under truck cab and/or sleeper						1	
Vehicle Maint. Violation: 393.75(a) Flat tire or fabric exposed (OOS)						8 + 2 (OOS)	
Vehicle Maint. Violation: 393.53(b) CMV manufactured after 10/19/94 has an automatic airbrake adjustment system that fails to compensate for wear						4	
10/5/2015	NM3670100722	NM	IRH9768	NM	TRUCK TRACTOR		2
HOS Compliance Violation: 395.8 Record of Duty Status violation (general/form and manner)						1	
10/5/2015	AZ0YDG000501	AZ	IRH9768	NM	TRUCK TRACTOR		2
9/28/2015	AZ0YEJ000845	AZ	IRH9768	NM	TRUCK TRACTOR		2
Vehicle Maint. Violation: 396.3A1DSUJ Universal Joint Loose / Broken / Missing Component (OOS)						3 + 2 (OOS)	
Vehicle Maint. Violation: 396.3(a)(1) Inspection, repair and maintenance of parts & accessories						2	
Vehicle Maint. Violation: 393.75(c) Tire-other tread depth less than 2/32 of inch						8	
Vehicle Maint. Violation: 396.5(b) Oil and/or grease leak						3	
9/25/2015	AZ0000779240	AZ	1RJ5601	NM	STRAIGHT TRUCK		2
9/24/2015	NM3670100662	NM	IRH9768	NM	TRUCK TRACTOR		2
HOS Compliance Violation: 395.3A2-PROP Driving beyond 14 hour duty period (Property carrying vehicle)						7	
9/21/2015	AZ0YEJ000832	AZ	IRH9768	NM	TRUCK TRACTOR		1
9/20/2015	NM3583104388	NM	IRH9768	NM	TRUCK TRACTOR		1
8/28/2015	AZ0000775601	AZ	IRH9768	NM	TRUCK TRACTOR		1
8/19/2015	AZ0YEM000820	AZ	IRH9768	NM	TRUCK TRACTOR		1

10/24/2016

Safety Measurement System - Complete SMS Profile (U.S. DOT# 340457)

CRASH ACTIVITY DETAIL (VEHICLES INVOLVED IN CRASHES)

Number of Crashes: 0

This carrier has no crashes to display.

INVESTIGATION RESULTS

Acute/Critical Violations: 0

This carrier has no Acute/Critical violations to display.

Summary of Activities

The summary includes information on the 5 most recent investigations and 24 months of inspections and crash history.

Most Recent Investigation: 1/26/2012
(Compliance Review)

Total Inspections: 19

Total Inspections without

Violations used in SMS: 10

Total Inspections with

Violations used in SMS: 9

Total Crashes* : 0

*Crashes listed represent a motor carrier's involvement in reportable crashes, regardless of the carrier's or driver's role in the crash. Continue for details.

Carrier Registration

Subject to General Threshold

Penalties History

(Six years as of 10/23/2016 updated daily from FMCSA)

CLOSED


DATE	CASE #	
10/9/2012	NM-2012-0033-US1057	
	392.9a(a)	
Violation: (1)		\$0.00
	382.305(b)	
Violation: (1)		\$3,460.00
	382.401(c)	
Violation: (6)		\$790.00


USE OF SMS DATA/INFORMATION

FAST Act of 2015:

Readers should not draw conclusions about a carrier's overall safety condition simply based on the data displayed in this system. Unless a motor carrier has received an UNSATISFACTORY safety rating under part 385 of title 49, Code of Federal Regulations, or has otherwise been ordered to discontinue operations by the Federal Motor Carrier Safety Administration, it is authorized to operate on the Nation's roadways.

Safety Measurement System:

The data in the Safety Measurement System (SMS) is performance data used by the Agency and Enforcement Community. A  symbol, based on that data, indicates that FMCSA may prioritize a motor carrier for further monitoring.

The  symbol is not intended to imply any federal safety rating of the carrier pursuant to 49 USC 31144. Readers should not draw conclusions about a carrier's overall safety condition simply based on the data displayed in this system. Unless a motor carrier in the SMS has received an UNSATISFACTORY safety rating pursuant to 49 CFR Part 385, or has otherwise been ordered to discontinue operations by the FMCSA, it is authorized to operate on the nation's roadways.

Motor carrier safety ratings are available at <http://safer.fmcsa.dot.gov> and motor carrier licensing and insurance status are available at <http://li-public.fmcsa.dot.gov/>.

Enter Value: ABC SEPTIC SYSTEMS INC

Search

ABC CONCRETE MFG CO INC
USDOT Number: 778953

Other Information for this Carrier

Carriers: If you would like to update the following ID/Operations information, please complete and submit form MCS-150 which can be obtained online or from your State FMCSA office. If you would like to challenge the accuracy of your company's safety data, you can do so using FMCSA's DataQs system.

▼ SMS Results

▼ Licensing & Insurance

Carrier and other users: FMCSA provides the Company Safety Profile (CSP) to motor carriers and the general public interested in obtaining greater detail on a particular motor carrier's safety performance than what is captured in the Company Snapshot. To obtain a CSP please visit the [CSP order page](#) or call (800)832-5660 or (703)280-4001 (Fee Required).

For help on the explanation of individual data fields, click on any field name or for help of a general nature go to [SAFER General Help](#).

The information below reflects the content of the FMCSA management information systems as of 10/23/2016. Carrier Registration Information Outdated. Carrier VMT Outdated.

Entity Type: CARRIER																															
Operating Status: NOT AUTHORIZED	Out of Service Date: None																														
Legal Name: ABC CONCRETE MFG CO INC																															
DBA Name: ABC SEPTIC SYSTEMS INC																															
Physical Address: 1004 SOUTH LAKE ST FARMINGTON, NM 87401																															
Phone: (505) 325-8289																															
Mailing Address: 1004 SOUTH LAKE ST FARMINGTON, NM 87401																															
USDOT Number: 778953	State Carrier ID Number:																														
MC/MX/FF Number(s): MC-348533	DUNS Number: -																														
Power Units: 2	Drivers: 3																														
MCS-150 Form Date: 04/22/2014	MCS-150 Mileage (Year): 55,579 (2013)																														
Operation Classification:																															
<table border="0"> <tr> <td><input checked="" type="checkbox"/> Auth. For Hire</td> <td>Priv. Pass. (Non-business)</td> <td>State Govt</td> </tr> <tr> <td><input type="checkbox"/> Exempt For Hire</td> <td>Migrant</td> <td>Local Govt</td> </tr> <tr> <td><input type="checkbox"/> Private (Property)</td> <td>U.S. Mail</td> <td>Indian Nation</td> </tr> <tr> <td><input type="checkbox"/> Priv. Pass. (Business)</td> <td>Fed. Govt</td> <td></td> </tr> </table>		<input checked="" type="checkbox"/> Auth. For Hire	Priv. Pass. (Non-business)	State Govt	<input type="checkbox"/> Exempt For Hire	Migrant	Local Govt	<input type="checkbox"/> Private (Property)	U.S. Mail	Indian Nation	<input type="checkbox"/> Priv. Pass. (Business)	Fed. Govt																			
<input checked="" type="checkbox"/> Auth. For Hire	Priv. Pass. (Non-business)	State Govt																													
<input type="checkbox"/> Exempt For Hire	Migrant	Local Govt																													
<input type="checkbox"/> Private (Property)	U.S. Mail	Indian Nation																													
<input type="checkbox"/> Priv. Pass. (Business)	Fed. Govt																														
Carrier Operation:																															
<table border="0"> <tr> <td><input checked="" type="checkbox"/> Interstate</td> <td><input type="checkbox"/> Intrastate Only (HM)</td> <td><input type="checkbox"/> Intrastate Only (Non-HM)</td> </tr> </table>		<input checked="" type="checkbox"/> Interstate	<input type="checkbox"/> Intrastate Only (HM)	<input type="checkbox"/> Intrastate Only (Non-HM)																											
<input checked="" type="checkbox"/> Interstate	<input type="checkbox"/> Intrastate Only (HM)	<input type="checkbox"/> Intrastate Only (Non-HM)																													
Cargo Carried:																															
<table border="0"> <tr> <td><input checked="" type="checkbox"/> General Freight</td> <td>Liquids/Gases</td> <td>Chemicals</td> </tr> <tr> <td><input checked="" type="checkbox"/> Household Goods</td> <td>Intermodal Cont.</td> <td>Commodities Dry Bulk</td> </tr> <tr> <td><input checked="" type="checkbox"/> Metal: sheets, coils, rolls</td> <td>Passengers</td> <td>Refrigerated Food</td> </tr> <tr> <td>Motor Vehicles</td> <td><input checked="" type="checkbox"/> Oilfield Equipment</td> <td>Beverages</td> </tr> <tr> <td>Drive/Tow away</td> <td>Livestock</td> <td>Paper Products</td> </tr> <tr> <td><input checked="" type="checkbox"/> Logs, Poles, Beams, Lumber</td> <td><input checked="" type="checkbox"/> Grain, Feed, Hay</td> <td>Utilities</td> </tr> <tr> <td><input checked="" type="checkbox"/> Building Materials</td> <td>Coal/Coke</td> <td>Agricultural/Farm Supplies</td> </tr> <tr> <td>Mobile Homes</td> <td>Meat</td> <td><input checked="" type="checkbox"/> Construction</td> </tr> <tr> <td><input checked="" type="checkbox"/> Machinery, Large Objects</td> <td>Garbage/Refuse</td> <td>Water Well</td> </tr> <tr> <td>Fresh Produce</td> <td>US Mail</td> <td></td> </tr> </table>		<input checked="" type="checkbox"/> General Freight	Liquids/Gases	Chemicals	<input checked="" type="checkbox"/> Household Goods	Intermodal Cont.	Commodities Dry Bulk	<input checked="" type="checkbox"/> Metal: sheets, coils, rolls	Passengers	Refrigerated Food	Motor Vehicles	<input checked="" type="checkbox"/> Oilfield Equipment	Beverages	Drive/Tow away	Livestock	Paper Products	<input checked="" type="checkbox"/> Logs, Poles, Beams, Lumber	<input checked="" type="checkbox"/> Grain, Feed, Hay	Utilities	<input checked="" type="checkbox"/> Building Materials	Coal/Coke	Agricultural/Farm Supplies	Mobile Homes	Meat	<input checked="" type="checkbox"/> Construction	<input checked="" type="checkbox"/> Machinery, Large Objects	Garbage/Refuse	Water Well	Fresh Produce	US Mail	
<input checked="" type="checkbox"/> General Freight	Liquids/Gases	Chemicals																													
<input checked="" type="checkbox"/> Household Goods	Intermodal Cont.	Commodities Dry Bulk																													
<input checked="" type="checkbox"/> Metal: sheets, coils, rolls	Passengers	Refrigerated Food																													
Motor Vehicles	<input checked="" type="checkbox"/> Oilfield Equipment	Beverages																													
Drive/Tow away	Livestock	Paper Products																													
<input checked="" type="checkbox"/> Logs, Poles, Beams, Lumber	<input checked="" type="checkbox"/> Grain, Feed, Hay	Utilities																													
<input checked="" type="checkbox"/> Building Materials	Coal/Coke	Agricultural/Farm Supplies																													
Mobile Homes	Meat	<input checked="" type="checkbox"/> Construction																													
<input checked="" type="checkbox"/> Machinery, Large Objects	Garbage/Refuse	Water Well																													
Fresh Produce	US Mail																														

Murray

S

McKEE REPORTING, INC.

ID/Operations | Inspections/Crashes In US | Inspections/Crashes In Canada | Safety Rating

EXHIBIT 5

10/24/2016

SAFER Web - Company Snapshot ABC CONCRETE MFG CO INC

US Inspection results for 24 months prior to: 10/23/2016

Total Inspections: 1

Total IEP Inspections: 0

Note: Total inspections may be less than the sum of vehicle, driver, and hazmat inspections. Go to [Inspections Help](#) for further information.

Inspections:				
Inspection Type	Vehicle	Driver	Hazmat	IEP
Inspections	1	1	0	0
Out of Service	0	0	0	0
Out of Service %	0%	0%	%	0%
Nat'l Average % (2014-2015)	20.34%	4.96%	3.91%	N/A

Crashes reported to FMCSA by states for 24 months prior to: 10/23/2016

Note: Crashes listed represent a motor carrier's involvement in reportable crashes, without any determination as to responsibility.

Crashes:				
Type	Fatal	Injury	Tow	Total
Crashes	0	0	0	0

[ID/Operations](#) | [Inspections/Crashes In US](#) | [Inspections/Crashes In Canada](#) | [Safety Rating](#)

Canadian Inspection results for 24 months prior to: 10/23/2016

Total inspections: 0

Note: Total inspections may be less than the sum of vehicle and driver inspections. Go to [Inspections Help](#) for further information.

Inspections:		
Inspection Type	Vehicle	Driver
Inspections	0	0
Out of Service	0	0
Out of Service %	0%	0%

Crashes results for 24 months prior to: 10/23/2016

Note: Crashes listed represent a motor carrier's involvement in reportable crashes, without any determination as to responsibility.

Crashes:				
Type	Fatal	Injury	Tow	Total
Crashes	0	0	0	0

[ID/Operations](#) | [Inspections/Crashes In US](#) | [Inspections/Crashes In Canada](#) | [Safety Rating](#)

The Federal safety rating does not necessarily reflect the safety of the carrier when operating in intrastate commerce.

Carrier Safety Rating:

The rating below is current as of: 10/23/2016

Review Information:

Rating Date:	04/16/2012	Review Date:	01/26/2012
Rating:	Conditional	Type:	Compliance Review

SAFER Home | Feedback | Privacy Policy | USA.gov | Freedom of Information Act (FOIA) | Accessibility | OIG Hotline | Web Policies and Important Links | Plug-Ins

Federal Motor Carrier Safety Administration
1200 New Jersey Avenue SE, Washington, DC 20590 • 1-800-832-5680 • TTY: 1-800-877-8339 • Field Office Contacts

EXHIBIT 5

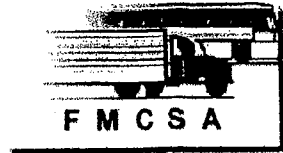
FMCSA Motor Carrier

JSDOT Number: 778953

Jockey Number: MC348533

Legal Name: ABC SEPTIC SYSTEMS, INC.

DBA (Doing-Business-As) Name

**Addresses**Business Address: 1004 SOUTH LAKE ST
FARMINGTON, NM 87401

Business Phone: (505) 325-8289 Business Fax:

Mail Address:

Mail Phone:

Mail Fax:

Undeliverable Mail: NO

Authorities:

Common Authority: NONE

Application Pending: NO

Contract Authority: INACTIVE

Application Pending: NO

Broker Authority: NONE

Application Pending: NO

Property: YES

Passenger: NO

Household Goods: NO

Private: NO

Enterprise: NO

Insurance Requirements:

BIPD Exempt: NO BIPD Waiver: NO BIPD Required: \$750,000 BIPD on File: \$0

Cargo Exempt: NO Cargo Required: NO Cargo on File: NO

BOC-3: YES Bond Required: NO Bond on File: NO

Blanket Company: TRUCK PROCESS AGENTS OF AMERICA, INC

Comments: 09/11/06 NAME CHANGE ASSIGNED TO WILLIE.

Active/Pending Insurance:

Form:	Type:	Posted Date:	
Policy/Surety Number:	Coverage From:	\$0 To:	\$0
Effective Date:	Cancellation Date:		

Rejected Insurances:

Form:	Type:	Coverage From:	\$0 To:	\$0
Policy/Surety Number:	Rejected:			
Received:				
Rejected Reason:				

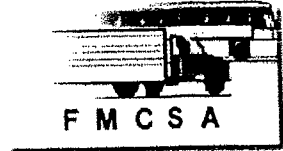
MCSA Motor Carrier

SDOT Number: 778953

Ticket Number: MC348533

Legal Name: ABC SEPTIC SYSTEMS, INC.

3A (Doing-Business-As) Name

**Insurance History:**

Form: 91X	Type: BIPD/Primary		
Policy/Surety Number: CTP0000026	Coverage From	\$0	To: \$1,000,000
Effective Date From: 11/06/1998	To: 07/16/1999	Disposition: Cancelled	

Insurance Carrier FARWEST INSURANCE COMPANY(FAR WEST)
 Attn: NATALIE A. WEST
 Address: P.O. BOX 4500
 WOODLAND HILLS, CA 91367 US
 Telephone: (818) 871 - 2000 Fax:

Form: 91X	Type: BIPD/Primary		
Policy/Surety Number: CTP0000026	Coverage From	\$0	To: \$1,000,000
Effective Date From: 11/06/1998	To: 11/06/1998	Disposition: Replaced	

Insurance Carrier FARWEST INSURANCE COMPANY(FAR WEST)
 Attn: NATALIE A. WEST
 Address: P.O. BOX 4500
 WOODLAND HILLS, CA 91367 US
 Telephone: (818) 871 - 2000 Fax:

Form: 91X	Type: BIPD/Primary		
Policy/Surety Number: BAW (07) 52911357	Coverage From	\$0	To: \$1,000,000
Effective Date From: 02/09/2006	To: 10/29/2006	Disposition: Replaced	

Insurance Carrier WEST AMERICAN INSURANCE CO.
 Attn: DENISE MACKENDRICK
 Address: 9450 SEWARD RD.
 FAIRFIELD, OH 45014 US
 Telephone: (513) 867 - 3828 Fax:

Form: 91X	Type: BIPD/Primary		
Policy/Surety Number: TN505638	Coverage From	\$0	To: \$750,000
Effective Date From: 10/29/2006	To: 10/30/2011	Disposition: Replaced	

Insurance Carrier NORTHLAND INSURANCE COMPANY
 Attn:
 Address: 385 WASHINGTON STREET MAIL CODE 103
 ST. PAUL, MN 55102-1309 US
 Telephone: (651) 310 - 4100 Fax: (651) 310 - 4949

MCSA Motor Carrier

SDOT Number: 778953
 Locket Number: MC348533
 Legal Name: ABC SEPTIC SYSTEMS, INC.
 DBA (Doing-Business-As) Name

**Insurance History:**

Form: 91X	Type: BIPD/Primary		
Policy/Surety Number: LTO0002480	Coverage From	\$0	To: \$750,000
Effective Date From: 10/30/2011	To: 12/06/2012	Disposition: Cancelled	

Insurance Carrier: NATIONAL CASUALTY COMPANY
 Attn: ROBERT L WELCH
 Address: 8877 N. GAINEY CTR DR, PO BOX 4110
 SCOTTSDALE, AZ 85261 US
 Telephone: (480) 948 - 0505 Fax:

Form: 91X	Type: BIPD/Primary		
Policy/Surety Number: LTO0007622	Coverage From	\$0	To: \$750,000
Effective Date From: 12/06/2012	To: 12/16/2014	Disposition: Cancelled	

Insurance Carrier: NATIONAL CASUALTY COMPANY
 Attn: ROBERT L WELCH
 Address: 8877 N. GAINEY CTR DR, PO BOX 4110
 SCOTTSDALE, AZ 85261 US
 Telephone: (480) 948 - 0505 Fax:

Authority History:

Sub No.	Authority Type	Original Action	Disposition Action	
	MOTOR PROPERTY CONTRACT CARRIER	REINSTATED	10/24/2006 REVOKED	12/22/2014
	MOTOR PROPERTY CONTRACT CARRIER	GRANTED	01/19/1999 REVOKED	10/01/1999

Pending Application:

Authority Type	Filed	Status	Insurance	BOC-3

Revocation History:

Authority Type	1st Serve Date	2nd Serve Date	Reason
CONTRACT	11/19/2014	12/22/2014	INVOLUNTARY REVOCATION
CONTRACT	08/11/1999	10/01/1999	INVOLUNTARY REVOCATION

10/24/2016

Safety Measurement System - Complete SMS Profile (U.S. DOT# 778953)



ABC CONCRETE MFG CO INC

DBA: ABC SEPTIC SYSTEMS
INC

U.S. DOT#: 778953
Address: 1004 SOUTH LAKE ST
FARMINGTON, NM 87401
Number of Vehicles: 2
Number of Drivers: 3
Number of Inspections: 2

Safety Rating & OOS Rates

(As of 10/23/2016 updated daily
from SAFER)

CONDITIONAL
(Rating Date: 04/16/2012)

Out of Service Rates

Type	OOS %	National Avg %
Vehicle	0.0	20.3
Driver	0.0	5.0
Hazmat		3.9

Licensing and Insurance

(As of 10/23/2016 updated hourly
from L&I)

Active For-Hire Authority	
Type	Yes/No MC#/MX#
Property	No
Passenger	No
Household Goods	No
Broker	No

U.S. DOT# 778953 has no current for-hire operating authority with FMCSA.

See how the proposed enhancements impact carrier results. Visit the SMS Preview Website

BASIC Status (Public Property Carrier View) ?

Behavior Analysis & Safety Improvement Categories (BASICS)

Based on a 24-month record ending September 23, 2016



Unsafe Driving



Not Public
Crash Indicator



Hours-of-
Service
Compliance



Vehicle
Maintenance



Controlled
Substances
and Alcohol



Not Public
Hazardous
Materials
Compliance



Driver Fitness

On-Road Performance

0
Measure

NOT
PUBLIC

0
Measure

0
Measure

0
Measure

NOT
PUBLIC

0
Measure

On-Road Performance Detail

Driver
Inspections with
Unsafe Driving
Violations: 0

Safety Event
Group: No Safety
Event Grouping

NOT

Driver
Inspections: 2
with HOS
Compliance
Violations: 0
Safety Event
Group: No

Vehicle
Inspections: 2
with Vehicle
Maint.
Violations: 0
Safety Event
Group: No

Driver
Inspections: 2
with
Drugs/Alcohol
Violations: 0
Safety Event
Group: No

NOT

Driver
Inspections: 2
with Driver
Fitness
Violations: 0
Safety Event
Group: No Safety

EXHIBIT 5

10/24/2016

Safety Measurement System - Complete SMS Profile (U.S. DOT# 778953)

Avg. PU * UF: 2	Report	Safety Event	Safety Event	Safety Event	Safety Event	Measure	Event Grouping
Inspection Date	Number	Grouping	Grouping	Grouping	Grouping	Severity Weight (SW)	Time Weight (TIW)
Segment		State	Plate Number	Plate State	Type		
Combination							
Carrier							

Investigation Results

No Acute/Critical
Violations
Discovered

N/A

No
Acute/Critical
Violations
DiscoveredNo Acute/Critical
Violations
DiscoveredNo Acute/Critical
Violations
DiscoveredNOT
PUBLICNo Acute/Critical
Violations
DiscoveredSelect a BASIC icon above to get details, or view your [Complete SMS Profile](#).

VIOLATION SUMMARY

Violations: 0

This carrier has no violations to display.

INSPECTION HISTORY

Total Inspections: 2

Report			Vehicle			Measure	
Inspection Date	Number	State	Plate Number	Plate State	Type	Severity Weight (SW)	Time Weight (TIW)
7/31/2015	AZ0YEL001469	AZ	IRG9309	NM	TRUCK TRACTOR		1
10/22/2014	TNTCDK000660	TN	IRG9309	NM	TRUCK TRACTOR		1

CRASH ACTIVITY DETAIL (VEHICLES INVOLVED IN CRASHES)

Number of Crashes: 0

This carrier has no crashes to display.

INVESTIGATION RESULTS

Acute/Critical Violations: 0

This carrier has no Acute/Critical violations to display.

Summary of Activities

The summary includes information on the 5 most recent investigations and 24 months of inspections and crash history.

Most Recent Investigation: 1/26/2012
(Compliance Review)

Total Inspections: 2
Total Inspections without
Violations used in SMS: 2
Total Inspections with
Violations used in SMS: 0

Total Crashes*: 0

Carrier Registration

Flags

Subject to General Threshold

Penalties History

(Six years as of 10/23/2016 updated daily from [FMCSA](#))

CLOSED

DATE CASE #

10/9/2012 NM-2012-0034-
US1057

Violation: 391.51(a) \$790.00

Violation: 382.115(a) \$1,210.00

EXHIBIT 5

10/24/2016

Safety Measurement System - Complete SMS Profile (U.S. DOT# 778953)


*Crashes listed represent a motor carrier's involvement in reportable crashes, regardless of the carrier's or driver's role in the crash. Continue for details.


USE OF SMS DATA/INFORMATION

FAST Act of 2015:

Readers should not draw conclusions about a carrier's overall safety condition simply based on the data displayed in this system. Unless a motor carrier has received an UNSATISFACTORY safety rating under part 385 of title 49, Code of Federal Regulations, or has otherwise been ordered to discontinue operations by the Federal Motor Carrier Safety Administration, it is authorized to operate on the Nation's roadways.

Safety Measurement System:

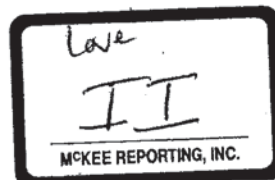
The data in the Safety Measurement System (SMS) is performance data used by the Agency and Enforcement Community. A  symbol, based on that data, indicates that FMCSA may prioritize a motor carrier for further monitoring.

The  symbol is not intended to imply any federal safety rating of the carrier pursuant to 49 USC 31144. Readers should not draw conclusions about a carrier's overall safety condition simply based on the data displayed in this system. Unless a motor carrier in the SMS has received an UNSATISFACTORY safety rating pursuant to 49 CFR Part 385, or has otherwise been ordered to discontinue operations by the FMCSA, it is authorized to operate on the nation's roadways.

Motor carrier safety ratings are available at <http://safer.fmcsa.dot.gov> and motor carrier licensing and insurance status are available at <http://li-public.fmcsa.dot.gov/>.



AGENCY/COMPANY AGREEMENT



The Company and the Agent agree as follows:

I. AGENT'S AUTHORITY

- A. The Agent has the authority to solicit, receive and transmit applications for insurance contracts for which a commission is specified in the prevailing Commission Schedule.
- B. The Agent agrees to:
 - 1. Bind and execute insurance contracts subject to the underwriting rules and regulations of the Company; and
 - 2. Forward to the Company copies of all binders, policies, certificates, and endorsements issued by the Agent within three (3) business days of inception of coverage.

II. COLLECTION, ACCOUNTING, AND PAYMENT OF PREMIUMS

For premium collection, accounting and payment purposes, the Agency and the Company shall designate policies as either agency bill or direct bill. The rules governing premium collection, accounting and payment are contained in the attached Addendum A. All premiums which the Agent receives for business that it places with the Company are the property of the Company and will be held by the Agent as a fiduciary in an account as required by law.

III. COMMISSIONS

The Agent shall earn commissions at the percentage rates set forth in the prevailing Commission Schedule, or as otherwise negotiated and agreed.

IV. AMENDMENTS TO THIS AGREEMENT

- A. This Agreement may be amended at any time by a written agreement signed by both the Agent and the Company.
- B. This Agreement may be amended by the Company after giving the Agent ninety (90) days advance written notice, except that no advance notice is required of the Company to:
 - 1. increase commission rates; or
 - 2. add lines of business to the Commission Schedule.
- C. Individual commission rates will remain in effect for not less than one year. Changes in commission rates will apply to policies or endorsements with effective dates after the change in commission becomes effective.

V.

CLAIMS

- A. The Agent shall immediately report all claims and losses and forward all legal process involving the Company to the appropriate Company claims office.
- B. Unless otherwise authorized by the Company in writing, the Agent may not commit the Company to any liability in connection with any claim or loss.

VI.

ARBITRATION

The Agent and the Company may, by mutual consent, agree to arbitrate any controversy arising out of this Agreement. Their agreement to arbitrate shall be indicated by their executing the Company's Consent to Arbitration Form.

VII.

INDEMNIFICATION

Whenever any lawsuit is filed against the Agent which allegedly arises out of the Company's act or omission ("Suit"):

- A. The Company shall indemnify the Agent and hold it harmless against liability for damages and reasonable expenses incurred in the investigation and defense of the Suit, including reasonable legal fees, except to the extent that the Agent:
 - 1. Caused, compounded, or contributed to the Company's act or omission, or
 - 2. Assumes any liability or makes any payment by way of compromise or settlement or incurs any expense with regard to the Suit without the Company's prior written consent.
- B. The Agent shall immediately notify the Company in writing of the Suit and shall fully cooperate with the Company. If the Agent fails to do so, the Company shall be relieved of any obligations to indemnify and hold the Agent harmless.
- C. The Company shall have the right to assume or associate itself in the defense of the Suit.

VIII.

SUSPENSION

If the Agent violates any of the terms of this Agreement, including any Company rules or regulations, the Company may suspend the Agent's authority to bind any new or renewal business and to increase coverage(s) on any policy. The suspension shall take effect when the Company provides the Agent written notice of the suspension. If the suspension is because the Agent is delinquent in accounting for, or in payment of, monies due, the Company may also place policyholders on direct bill premium collection.

IX.

TERMINATION

- A. The Agreement may be terminated at any time by either party's giving ninety (90) days prior written notice to the other, subject to applicable regulatory requirements.
- B. The Company may terminate this Agreement immediately upon giving written notice to the Agent if:
 - 1. The Agent's authority to engage in the business of insurance is canceled, suspended, revoked or not renewed;
 - 2. The Agent materially breaches any provision of this Agreement, including any Company rules or regulations, or any other agreement between the Agent and the Company;
 - 3. The Agent commits fraud, gross negligence or willful misconduct related to the business of insurance or trust fund money;
 - 4. The Agent abandons its business or becomes insolvent or is placed in receivership or a petition is filed proposing the adjudication of the Agent as bankrupt; or
 - 5. The Agent or any of the Agent's principals are convicted of a crime for activity related to the business of insurance or that of trust fund money.
- C. The Company, at its sole discretion, may offer the Agent a written plan of rehabilitation prior to giving a notice of termination. Such written plan of rehabilitation may include:
 - 1. The identification by the Company of the specific problem areas;
 - 2. Performance objectives and specific dates for accomplishment;
 - 3. Periodic meetings at which time the performance objectives will be mutually reviewed; and
 - 4. The specific length of the rehabilitation plan.

X.

AFTER NOTICE OF TERMINATION

- A. If this Agreement is terminated, then, unless and until the Company notifies the Agent in writing to the contrary, the Agent shall:
 - 1. Continue to service policies which are in force on the effective date of termination and renewals;
 - 2. Refrain from increasing or extending the Company's liability under, or alter the terms of, any policy without the Company's prior written consent;

3. Continue to abide by the Addendum A collection, accounting and payment rules in effect as of the effective date of termination, except that the Company in its sole discretion may place policyholders on direct bill premium collection; and
4. Continue to receive commissions at the rates prevailing on the effective date of termination, unless otherwise notified in writing by the Company.

- B. If this Agreement is terminated, the Company may cancel or nonrenew any insurance policy for any reason allowed by law.

XI. OWNERSHIP OF EXPIRATIONS

The records of the Agent and the use and control of expirations on business written by the Company shall remain the property of the Agent and will be left in the Agent's undisturbed possession so long as the Agent has accounted for and paid to the Company all premiums collected or held for the Company. If the Agent fails to fulfill all of these obligations, then the title, use and control of the Agent's records and expirations on business written by the Company immediately vest in the Company with the right to sell, assign or transfer, and the Company has the right to require from the Agent the immediate delivery of all relevant records; but the Company will refrain from exercising its right to sell, assign or transfer if the Agent promptly furnishes security acceptable to the Company for the payment of the Agent's debt to the Company.

XII. SALE OF AGENT'S BUSINESS; ASSIGNMENT

The Agent shall not sell the book of business it has with the Company, or assign or otherwise transfer this Agreement, without giving the Company prior written notice so that the Company can determine whether it wishes to appoint the successor agency or otherwise do business with the successor agency regarding the assigned, transferred or sold insurance business. When providing such notice to the Company, the Agent will provide information and documentation (such as the Company normally requires when considering the appointment of an agent) regarding the successor agency and the proposed sale, assignment or transfer at least ninety (90) days prior to the effective date of the sale, assignment or transfer. If the Agent fails to comply with these requirements, then the Agent shall be deemed to have elected to terminate this Agreement as of the sale, assignment or transfer.

XIII. NOTICES

Any notice which is required by this Agreement must be written. It shall be deemed given as of the date it is delivered to or delivery is refused at the addresses given on the last page of this Agreement, or any other addresses of which the parties give written notice to the other.

XIV.

GENERAL PROVISIONS

- A. This Agreement is not a contract of employment and does not create the relationship of employer and employee between the Company and Agent. The Agent is an independent contractor with regard to the performance of the duties imposed and rights conferred by this Agreement.
- B. All forms, materials and other supplies furnished to the Agent shall remain the property of the Company. The Agent shall return all unused forms, materials and supplies to the Company immediately upon the Company's request.
- C. The Agent shall pay all of the expenses which it incurs pursuant to this Agreement.
- D. Other than premium disputes which the Agent has contested, in writing, in accordance with Addendum A, the Company has the right to offset any amount owed to the Agent under this Agreement or any other agreement between the Agent and the Company against any amount the Agent owes the Company, regardless of whether the Agent owes the amounts pursuant to this Agreement.
- E. The Company has the right to inspect and audit the records maintained by the Agent on business the Agent places with the Company. The Company may exercise the right as often as necessary during normal business hours, upon giving the amount of notice which is reasonable under the circumstances.
- F. The Agent shall carry appropriate amounts of Professional Liability insurance throughout the term of this Agreement.
- G. The failure of the Company or the Agent to insist on strict compliance with this Agreement, or to exercise any right or remedy, shall not constitute a waiver of any rights contained in this Agreement, stop the parties from demanding full and complete compliance, or prevent the parties from exercising such remedy in the future.
- H. This Agreement amends, restates and supersedes any prior agency agreement, whether written or oral, between the Company and the Agent or their predecessors with respect to commercial insurance business. It constitutes the full and final agreement between the parties as to the subject matter hereof.
- I. If any provision of this Agreement should be invalid under or in conflict with governing laws, this Agreement shall be deemed amended to comply with the requirements of those laws without affecting the remaining provisions of this Agreement.
- J. This Agreement shall be interpreted according to the laws of the state where the Agent has its principal place of business.

This Agreement is effective as of January 31, 19 96, by and between
Woods Insurance Service, Inc. (the "Agent") and National American
Insurance Company (the "Company").

AGENT

BY: [Signature]

TITLE: 1/30/96

DATE: PRESIDENT

WITNESS: Mona Jappan

COMPANY

BY: [Signature]

TITLE: Chairman & CEO

DATE: 2-23-96

WITNESS: Valerie Wedden

Notices shall be sent to the Company at:
P.O. Drawer 9, 1010 Marvel, Chandler, Ok 74834

NATIONAL AMERICAN INSURANCE COMPANY

ADDENDUM A TO AGENCY/COMPANY AGREEMENT PREMIUM COLLECTION, ACCOUNTING AND PAYMENT RULES (Agency Bill and Direct Bill)

A. **DIRECT BILL** - For policies designated as "direct bill", the Company shall assume responsibility for premium collection. Each month the Company will mail to the Agent a commission check and a statement based on the gross premiums recorded by the Company for the Agent's account during the prior month. The Company shall determine and pay commissions within thirty (30) days after the end of the month in which such premiums are received and recorded by the Company, less any commission on return premiums. No commission shall be due or payable to the Agent on items which the Company determines have become doubtful accounts. Whenever the Company refunds or returns premiums to a policyholder, the Company will offset against commissions otherwise payable to the Agent that portion of the commission which is unearned because of the return or refund. The Agent will return any net amount due the Company within thirty (30) days of the Company's giving notice of the amount due.

B. **AGENCY BILL** - For policies designated as "agency bill", the Agent is required to collect premium on the Company's behalf, pursuant to the Agency/Company Agreement and the following rules:

1. *Definitions*

Accounting Month means the month for which the premium accounting is to be made.

Documents means premium bearing documents, including but not limited to policies, bonds, endorsements, renewal certificates, audits, interim reports, cancellations, and binders.

2. *Reporting of Premium*

The Company designates the Agent as:

- ☐ An Account Current Agent
- ☐ A Statement Agent

a. *Account Current Agent*

An Account Current Agent must report all amounts due from Documents which were effective or issued (whichever is later) during the Accounting Month. The Company must receive the Agent's account current report by the tenth (10th) day of the month following the Accounting Month.

The Agent must provide the reason for omitting items and provide supporting documentation. The omission of an item from an account current does not relieve the Agent from responsibility for accounting and paying premium to the Company, affect the Company's right to collect sums which are due or extend the time within which the Agent must make payment.

b. *Statement Agent*

The Company will send Statement Agents a statement of premiums charged by the Company to the Agent's account which are unpaid as of the end of the Accounting Month, including the name of each insured, policy number, gross premium, net premium due, and total balance due the Company. Within thirty (30) days of the statement date, the Agent shall provide written notice to the Company of the items on the statement with which the Agent disagrees, the reason for the disagreement, and supporting documentation.

The Company's omission of an item or items from a monthly statement shall not affect the Agent's responsibility to account for and pay all amounts due the Company.

3. *Payment of Premium*

The Company must receive payment in full by the fifteenth (15th) day of the second (2nd) month after the Accounting Month. For Account Current Agents, the amount due is the amount reported in the applicable account current. For Statement Agents, the amount due is the amount reported in the applicable Company statement.

The Company shall relieve the Agent from the duty to pay premiums in the following circumstances:

a. Flat Cancellation of Coverage

The Company shall relieve the Agent from responsibility to pay premium for flat canceled insurance coverage only if the coverage is canceled as set forth below and no losses have been incurred.

- i) For flat cancellation of short term coverage of ninety (90) days or less (including short term policies, renewal certificates, and endorsements), the Company must receive the original of the applicable Document prior to the effective date of coverage.
- ii) For flat cancellation of any other coverage, the Company must receive the original of the applicable Document or lost policy release within thirty (30) days after the effective date of coverage or the Document's issue date (whichever is later).

NOTE: In no case shall a short rate or pro-rata cancellation relieve the Agent from responsibility for earned premiums.

b. Collection Difficulties on Audits

The Company shall relieve the Agent from responsibility for paying premium resulting from audits and interim reports so long as the Company receives from the Agent timely written notice (including a copy of the audit invoice) that the Agent has made reasonable efforts to collect but has been unable to collect the premium due.

The Company must receive the Agent's notice within forty-five (45) days after the billing date of the premium charges resulting from the audit or interim reports. By sending such written notice, the Agent relieves the Company of any obligation to pay commission on the premium in question.

c. Financed Premium

The Agent is not responsible for paying the premium of policies which are financed through any premium financing arrangement, where the premium finance company sends the premium directly to the Company.

However, the Agent is responsible for premiums on all other transactions on policies which are financed, including, but not limited to:

- i) original premium which is forwarded by the premium finance company to the Agent; and
- ii) all additional premium which may become due (after the original financed premium is paid) as a result of policy activity, including, but not limited to, endorsement premiums or audit premiums which occur.

d. Premium Disputes

If the Company and the Agent disagree on the amount of a policy premium, the Agent may delay payment of only that portion of the premium which the Agent specifically contests in writing to the Company. The Company's decision about the disputed premium shall be deemed final. The Agent shall deliver any payment which the Company decides is due within fifteen (15) days of being given written notice of the Company's decision.

4. Agency Bill Commissions

The Company authorizes the Agent to retain commissions from premium collected by the Agent in accordance with the prevailing Commission Schedule. The Agent's privilege of retaining commission does not change the Agent's fiduciary obligation to the Company to hold premiums in trust for the Company.

5. Refunds and Return Premiums

Whenever the Company refunds or returns premiums, the Agent will return such premiums to the policyholder or the premium finance company, as appropriate, plus that portion of premium retained by the Agent as commission which is unearned.

REVISED AMENDMENT

Woods Insurance Services, Inc.
CIMI #1053

**AMENDMENT TO PRODUCER AGREEMENT
WITH CHANDLER INSURANCE MANAGERS, INC.**

WHEREAS, the undersigned insurance producer hereinafter referred to as "Producer" has a currently effective Producer Agreement with Chandler Insurance Managers, Inc. ("CIMI"); and

WHEREAS, CIMI has proposed an amendment to the Producer Agreement and Producer has agreed to such amendment;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree that Paragraph 3 entitled "Guarantee of Payment" is hereby amended so that it reads in full as follows:

Guarantee of Payment: The Producer guarantees payment of all premiums, excess and surplus lines taxes, policy fees, or any other charges or fees directly related to the policies of insurance placed through CIMI. All such premiums, taxes and other amounts, charges, or fees shall be paid upon the following terms and conditions:

- a. Premiums, fees, charges or taxes owing from Producer to CIMI shall be paid to CIMI based upon the terms and conditions ("quoted payment terms") included in each quote delivered by CIMI to Producer.
- b. If the quote does not include "quoted payment terms", all premiums, taxes, charges, or fees are due and payable to CIMI as follows:
 - i. For monthly reporting policies and direct bill policies, deposit premiums are due at binding and reports and premiums are due fifteen (15) days following the end of each month.
 - ii. For all other policies, premiums, taxes, charges or fees must be paid not later than ten (10) days following the end of each month based upon CIMI's statement of account.
- c. If the Producer cannot, with its best efforts, collect premiums determined to be due by an audit conducted by CIMI or the insurer ("audit premiums"), Producer is not liable to CIMI for "audit premiums" if:
 - i. The Producer has notified CIMI in writing that the Producer cannot collect the additional premium within thirty (30) days of receipt of a notice that additional premiums are due as a result of a final audit; and
 - ii. The Producer demonstrates proof of a good-faith effort to collect the "audit premiums"; and

iii. CIMI is not required to pay the insurer for such "audit premiums."

CIMI will owe no commissions to Producer on "audit premiums" returned for collection.

This Amendment to Producer Agreement is signed by the parties on the respective dates indicated below and shall be effective as of the 2 day of September, 2009, but shall not be binding on either party until it is accepted by CIMI at its office in Chandler, Oklahoma.

PRODUCER: Woods Insurance Services, Inc.

By: [Signature]

Roy L. "Bunky" Owen
Print or type name

President
Title

WITNESS

By: [Signature]

Deanne Levesque
Print or type name

Accepted at Chandler, Oklahoma this 8th day of Sept, 2009.

CHANDLER INSURANCE MANAGERS, INC.

By: [Signature]

Kyle Baker
Print or type name

Marketing Manager
Title



5/19/2008


Re: Commissions and Profit Sharing Schedule for Woods Insurance Services in reference to Aztec Well Service account written through NAICO (National American Insurance Co.) & CIMI (Chandlers Insurance Managers Inc.)

National American Insurance Co. agrees to give 15% on GL and Auto even though it is written through State National. This will be included in Profit Sharing.

National American Insurance Co. agrees to give 10% on Work Comp policies and this will be included in Profit Sharing.

Cargo and rigging coverage is written through Praetorian. Commission is a standard pay by CIMI (Chandlers Insurance Managers Inc.). This is not included in Profit Sharing.

Umbrella is written with AIG through CIMI (Chandlers Insurance Managers Inc.). Commission is 10% and is not included in Profit Sharing.



Brent LaGere
CEO

1010 Manvel Avenue ☐ P.O. Box 9 ☐ Chandler, Oklahoma 74834
(405) 258-0804 ☐ WATS 1-800-822-7802

EXHIBIT 6

PRODUCER AGREEMENT

This Agreement executed in duplicate by and between Chandler Insurance Managers Inc., having its principal office at 1010 Manvel Avenue, Chandler, Oklahoma, 74834 (hereinafter referred to as "CIMI" and Kloods Insurance Service, Inc., a Corporation (corporation/partnership/sole proprietorship) having its principal office at 4801 N. Butler Ave, Ste. 12101 Farmington, NM 87401 (hereinafter referred to as "the Producer").

WHEREAS, the Producer desires to utilize the services and facilities of CIMI in obtaining insurance coverages for the Producer's clients; and

WHEREAS, CIMI agrees to extend such services and facilities to the Producer subject to the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Proper License:** The Producer warrants that it is properly licensed to transact business as an agent or broker in accordance with the insurance laws of the state or states in which the Producer transacts such business.
2. **Commission:** CIMI agrees to allow the Producer commission on insurance coverages placed by the Producer through CIMI in accordance with the rate of commissions stipulated by CIMI. In the event that such coverages are canceled or modified (regardless of whether such cancellation or modification is instituted by the insurance company, the insured, legally-empowered regulatory offices, a premium finance entity, or by any other person), the Producer agrees to immediately remit to CIMI commissions on any return premiums at the same rate at which such return premiums are calculated within thirty (30) days following CIMI's demand for return commission. No insurance contract may be returned to CIMI by the Producer for flat cancellation unless no regulatory filings have been made and unless the policy is returned prior to its effective date. Earned premium shall be computed and charged on every contract canceled after effective date in accordance with the cancellation provisions of such contract unless otherwise prescribed by law.
3. **Guarantee of Payment:** The Producer guarantees payment of all premiums, excess and surplus lines taxes, policy fees, or any other charges or fees directly related to the policies of insurance placed through CIMI. All such premiums, taxes and other amounts, charges, or fees shall be paid upon the following terms and conditions:
 - a. Premiums, fees, charges or taxes owing from Producer to CIMI shall be paid to CIMI based upon the terms and conditions ("quoted payment terms") included in each quote delivered by CIMI to Producer. No policy will be bound unless and until CIMI has received payment of deposit premium for such policy.

- b. If the quote does not include "quoted payment terms", all premiums, taxes, charges, or fees are due and payable to CIMI not later than fifteen (15) days following the effective date of the applicable policy or if such premiums, taxes, charges, or fees have not been calculated on or before the effective date of the applicable policy, then, such payment is due within ten (10) days of written notice or demand for payment sent by CIMI to Producer's address as stated in this Agreement.
 - c. If the Producer cannot, with its best efforts, collect premiums determined to be due by an audit conducted by CIMI or the insurer ("audit premiums"), Producer is not liable to CIMI for "audit premiums" if:
 - i. The Producer has notified CIMI in writing that the Producer cannot collect the additional premium within thirty (30) days of receipt of a notice that additional premiums are due as a result of a final audit; and
 - ii. The Producer demonstrates proof of a good-faith effort to collect the "audit premiums"; and
 - iii. CIMI is not required to pay the insurer for such "audit premiums."
 - d. CIMI will owe no commissions to Producer on "audit premiums" returned for collection.
4. **Reporting and Payment of Excess and Surplus Lines Tax:** Producer shall be solely responsible for collecting, reporting and paying excess and surplus lines taxes, if any, with respect to any policy or policies placed by CIMI at the request of Producer.
5. **Direct Collection on Producer Default:** If premiums on any policy are not paid when due, CIMI may, at its option, and without waiving any of its rights as to Producer, collect the premium due from the insured. In the event CIMI collects the premium or any part thereof from the insured, the Producer shall not be entitled to any commission on the premium so collected. Attempts by CIMI to collect from the insured shall not relieve the Producer of liability to CIMI except to the extent of amounts actually collected by CIMI from the insured. CIMI reserves the right to cancel or request that the insurer cancel any policies for which premium payments are delinquent.
6. **Cost of Collection and Litigation:** CIMI shall be entitled to recover the cost of collection from the Producer, including reasonable attorney's fees incurred in an effort to collect unpaid premium. The prevailing party in any litigation arising from or relating to this Agreement shall be entitled to recover reasonable attorney's fees and litigation expenses.

7. **Issuance of Certificates Is Producer's Sole Responsibility:** Certificates of insurance are issued by Producer at its sole risk and expense. CIMI neither authorizes, encourages, or discourages the issuance of certificates. Certificates are merely an expression of Producer's opinion regarding coverage. CIMI shall confirm or deny the existence of a policy or policies if requested by Producer, but shall not issue certificates of insurance.
8. **Indemnification:** Each party agrees that it will indemnify and hold the other harmless from and against all claims, losses, damages, liabilities, judgments or settlements including reasonable attorney's fees, arising out of or related to any negligence, wrongful act, violation of law or regulation or any error or omission of such indemnifying party, except to the extent that such act, error or omission was caused by, contributed to or compounded by the indemnified party.
9. **E&O Insurance Coverage:** Errors & Omissions Insurance Coverage shall be maintained by the Producer. The undersigned Producer hereby represents and warrants that such coverage exists and is in good standing and is maintained to a limit of liability of One Million Dollars (\$1,000,00.00). It is further agreed that the Producer shall provide evidence of such coverage when requested by CIMI.
10. **No Implied Authority:** The Producer shall not bind CIMI as respects any insurance without the prior written authorization of CIMI in each case; nor shall the Producer place any advertisement respecting CIMI in any publication, or issue or distribute any circular or paper referring to CIMI without the prior consent of CIMI in writing. The Producer agrees to defend CIMI and pay all costs and damages incurred by CIMI resulting directly or indirectly from any such unauthorized binder, advertisement, publication, issuance or distribution.
11. **Entire Agreement:** This instrument constitutes the entire Agreement between the parties and supersedes all previous agreements entered into between the parties hereto; and all such previous agreements, whether oral or written, are hereby merged into this instrument.
12. **Termination:** This Agreement may be canceled at any time, upon thirty (30) days written notice of either party to the other, but said cancellation shall not alter, in any way, the continued application of this Agreement to insurance policies effective prior to the date of such cancellation.
13. **Choice of Law, Jurisdiction, and Venue:** This Agreement shall be construed under the laws of the State of Oklahoma, and Producer consents to jurisdiction of the State Court of general jurisdiction in Lincoln County, Oklahoma, for any action arising from or relating to this Agreement and such court shall be the exclusive venue for any such action.

This Agreement is signed by the parties on the respective dates indicated below and shall be effective as of the 6th day of March, 2006, but shall not be binding on either party until it is accepted by CIMI at its office in Chandler, Oklahoma.

PRODUCER

BY: *Peverly Owen*

Name

Vice-President

Title

WITNESS

BY: *Dianne Gwuzque*

Name

Accepted at Chandler, Oklahoma this 4 day of May, 2006

CHANDLER INSURANCE MANAGERS, INC.

BY: *Tina Chastity*

Name

Vice-President

Title



PROFIT SHARING AGREEMENT

Woods Insurance Service, Inc.

(Agent)

In addition to the commissions otherwise payable, National American Insurance Company agrees to allow Agent a profit sharing commission to be computed as herein described.

Premiums earned represent the actual premiums earned during the Plan Period as shown by the records of National American Insurance Company.

Losses incurred represent losses, reserves for losses and loss adjustment expenses paid and reserved. These losses are valued as of June 30th following the Plan Period.

Loss Ratio is the percentage obtained by dividing **losses incurred** by **premiums earned**.

The **Plan period** is January 1st to December 31st.

CONDITIONS

Company reserves the right to amend this Agreement by giving sixty (60) days written notice to Agent of the terms and conditions of the amendment. Company and Agent may amend this Agreement at any time with an amendment executed by both parties.

In case of misunderstanding as to the interpretation or application of any provision of this Agreement, it is agreed that such differences will be submitted to two arbitrators, one to be appointed by Company and one to be appointed by Agent. The arbitrators will select an experienced umpire who will have no conflict of interest in the matter. A decision rendered in writing and signed by any two of the persons acting hereunder shall be final and binding upon both Company and Agent. In the event of arbitration, Agent agrees to bear all of the expenses of its selected arbitrator and one half of the expenses of the umpire and Company agrees to bear all of the expenses of its selected arbitrator and one half of the expenses of the umpire.

If Company charges off as uncollectible, premiums on business not otherwise excluded under this Agreement, which by agreement, Agent has been relieved from paying Company, such premiums will be deducted from premiums earned for the profit sharing period during which such charge off occurred.

If Agent is delinquent in the payment of any monies due Company or in rendering an account current statement, any amount due Agent under this Agreement will not be paid to Agent. When the delinquency has been eliminated, payment of monies due Agent under this Agreement will be adjusted to reflect any unreimbursed costs incurred by Company may apply any monies due under this Agreement against any other amounts due Company Agent, including but not limited to, any costs of collection incurred by Company.

This Agreement may be terminated by either party at any time upon written notice to the other stating when, not less than ninety (90) days after the mailing of such notice, such cancellation will become effective, or immediately upon termination of the Agency Agreement, whichever occurs first. The final profit sharing calculation will be made as of June 30th following the plan period.

Profit sharing commission is payable only by Company check or draft.

This agreement is not assignable.

The following line descriptions only are **Included** in the calculation of the profit sharing: **Workers' Compensation, Automobile Liability, Physical Damage and General Liability** unless rated under a retrospective rating plan or under the Municipality or School program.

No profit sharing payments will be made for any calendar year period during which the net premiums written are less than \$ 250,000.

The profit sharing amount due Agent will be paid within 60 days following June 30th after each Plan Period.

PROFIT SHARING CALCULATION TABLE

Loss Ratio	Profit Commission Factor
60% and over	0%
55% - 59.9%	.5%
50% - 54.9%	1.0%
45% - 49.9%	1.5%
40% - 44.9%	2.0%
35% - 39.9%	2.5%
30% - 34.9%	3.0%
29.9% and below	3.5%

The Profit Sharing Commission is determined by multiplying the **Earned Premium**, for the Plan Period, by the **Profit Commission Factor**.

IN WITNESS WHEREOF, this agreement has been signed by the parties hereto this 31 day of January, 19 96.

Woods Insurance Service, Inc.

(Agent)

BY:

Roy Owen

NATIONAL AMERICAN INSURANCE COMPANY
(Company)

BY:

Burt Salter, Chairman & CEO

NATIONAL AMERICAN INSURANCE COMPANY

PROFIT SHARING AGREEMENT

Amendment A

Beginning with the calculation of the 1998 Plan period your Profit Sharing Agreement is changed as follows:

1. The line description **Property** will be **included** in the calculation of the profit sharing.
2. The line description **Umbrella** is **not included** in the calculation of the profit sharing.

In witness whereof, this amendment has been signed by the parties hereto this 15 day of MARCH 1998.

WOODS INSURANCE
(Agent)

By: [Signature]

NATIONAL AMERICAN INSURANCE COMPANY

By: [Signature]

**NATIONAL
AMERICAN
INSURANCE
COMPANY**

"Setting the standard that others strive for..."™

**ADDENDUM TO NATIONAL AMERICAN INSURANCE COMPANY PROFIT
SHARING AGREEMENT
Growth Bonus**

Effective January 1, 2010 (1/1/10), this addendum amends the NAICO Profit Sharing Agreement between Company and the Agent.

If a Profit Sharing bonus is payable under the NAICO Profit Sharing Agreement, and if the total eligible Written Premium for the calendar year equals or exceeds one hundred twenty five percent (125%) of the total eligible Written Premium for the prior calendar year, a growth bonus shall be payable. The amount of the growth bonus shall be 25% of the Profit Sharing Bonus amount otherwise payable as calculated under the Profit Sharing agreement between the Company and the Agent.

IN WITNESS WHEREOF, the Company and the Agent have signed this Addendum this

25th day of May 2010.

FOR THE AGENT

By: [Signature]

Name: Bunky Owens

Title: President

FOR THE COMPANY

By: [Signature]

Name: Lance Lagere

Title: SVP & COO

Agency Name: Woods Insurance Service, Inc.

1010 Marvel Avenue 9 P.O. Box 9 9 Chandler, Oklahoma 74834
(405)258-0804 9 WATS 1-800-822-7802

NATIONAL AMERICAN INSURANCE COMPANY**COMMISSION SCHEDULE****Workers' Compensation
Premium Level****Commission**

\$ 2,500. -	\$ 5,000.	10%
5,001. -	10,000.	9%
10,001. -	20,000.	8%
20,001. -	50,000.	7%
50,001. -	100,000.	6%
100,001. -	250,000.	5%
250,001. -		4%

Commercial Auto	15%
Comprehensive General Liability	15%
Umbrella/Excess Liability	10%
Commercial Package	15%
Commercial Property	15%
Inland Marine	15%
OIPA Program	20%
Municipality	15%
Personal Auto	15%
Schools - Package	10%
Schools - Workers' Compensation	5% (Level)

Commissions can be negotiated at any level.

NATIONAL AMERICAN INSURANCE COMPANY

COMMISSION SCHEDULE

<u>Workers' Compensation Premium Level</u>	<u>Commission</u>
\$0 - \$25,000	10%
\$25,001 - 100,000	7.5%
\$100,001 & above	5%
Commercial Auto	15%
Comprehensive General Liability	15%
Umbrella/Excess Liability	10%
Commercial Package	15%
Commercial Property	15%
Inland Marine	15%
OIPA Program	20%
Municipality	15%
Schools - Package	10%
Schools - Workers' Compensation	5% (Level)
Commissions can be negotiated at any level.	

12/19/98amb

Standard Commission Schedule

NATIONAL AMERICAN INSURANCE COMPANY

COMMISSION SCHEDULE

<u>Workers' Compensation Premium Level</u>	<u>Commission</u>
\$ 0 - \$ 25,000	10%
\$25,001 - 100,000	7.5%
\$100,001 & above	5%
Commercial Auto	15%
Comprehensive General Liability	15%
Umbrella/Excess Liability	10%
Commercial Package	15%
Commercial Property	15%
Inland Marine	15%
OIPA Program	20%
Municipality	15%
Personal Auto	15%
Schools - Package	10%
Schools - Workers' Compensation	5% (Level)

Commissions can be negotiated at any level.

6-19-96 Rev.

STDCOMM.WPD



5/19/2008

Re: Commissions and Profit Sharing Schedule for Woods Insurance Services in reference to Aztec Well Service account written through NAICO (National American Insurance Co.) & CIMI (Chandlers Insurance Managers Inc.)

National American Insurance Co. agrees to give 15% on GL and Auto even though it is written through State National. This will be included in Profit Sharing.

National American Insurance Co. agrees to give 10% on Work Comp policies and this will be included in Profit Sharing.

Cargo and rigging coverage is written through Praetorian. Commission is a standard pay by CIMI (Chandlers Insurance Managers Inc.). This is not included in Profit Sharing.

Umbrella is written with AIG through CIMI (Chandlers Insurance Managers Inc.). Commission is 10% and is not included in Profit Sharing.

A handwritten signature in cursive script, appearing to read "Brent LaGere".

Brent LaGere
CEO

DATE: 2/27/2017

NATIONAL AMERICAN INSURANCE CO
NOTE PAD LISTING AS OF 10:54:04PMR0015
PAGE: 1POLICY : MP10570130 -
CLAIM : BA140707

 ***** Report & Diary Control Date: 4/20/2015
 * BA140707 - ABC Concrete: Nelson v ABC Concrete & Montano
 * BA140707 - ABC Concrete: NAICO v ABC Concrete, et al

 04-20-15 DHARRISON - Reviewed F9 on claim notepad. I need to handle coverage.
 Opened coverage assist & set diary for initial review.
 *** REVIEW DIARY DATE SET FOR 04/22/2015 FOR DHARRISON. ***
 04-22-15 DHARRISON - Reviewed F9 from James Malone in claim notepad. IV was
 added to schedule on policy 3 months after accident.
 04-22-15 *DOC DHARRISON-MP10570130 - 2/09/14-15
 04-22-15 *DOC DHARRISON-MB47270130 - 2/09/14-15
 04-22-15 *DOC DHARRISON-4/18/15 FIRST REPT W/ ENCL: TENDER LETTER & COMPLAINT
 04-22-15 *DOC DHARRISON-1/09/2012 TRUCK LEASE & SERVICE AGREEMENT
 04-22-15 DHARRISON - Reviewed file. Pltf's file suit against ABC Concrete &
 driver Nicholas Montano alleging that Montano is an employee of ABC Concrete.
 04-22-15 DHARRISON - Sent EM to Ryan Gilmore for coverage review.
 04-22-15 *DOC DHARRISON-4/22/15 EM TO RYAN GILMORE FOR COVERAGE REVIEW
 04-22-15 DHARRISON - Sent policy links to Ryan Gilmore.
 4-22-15 *DOC DHARRISON-DOCUMENT ACCESS BATCH 11652 SENT TO RGILMORE@NAICO.COM
 Subject: BA140707 - ABC Concrete
 04-22-15 *DOC DHARRISON-4/22/15 EM TO RYAN GILMORE - POLICY LINKS
 04-22-15 DHARRISON - Reviewed & noted above. File has been submitted to
 Legal for review.
 *** REVIEW DIARY DATE SET FOR 04/27/2015 FOR DHARRISON. ***
 04-23-15 DHARRISON - Discussed with James Malone. Apparently, Concrete pays
 Septic's wages & insurance in exchange for Septic hauling Concrete's products.
 All payroll is on Concrete's checks.
 04-24-15 DHARRISON - Discussed with James M yesterday. Sent supplemental EM
 to Ryan Gilmore with additional information.
 04-24-15 *DOC DHARRISON-4/24/15 EM TO RYAN GILMORE - COVERAGE (SUPPLEMENTAL)
 04-24-15 DHARRISON - Reviewed & noted above. Waiting for response from
 Legal.
 *** REVIEW DIARY DATE SET FOR 05/04/2015 FOR DHARRISON. ***
 04-27-15 DHARRISON - Reviewed F9 from James B on claim notepad. We have now
 received a copy of Scottsdale's policy. Reviewed, bookmarked & highlighted the
 Scottsdale policy.
 04-27-15 *DOC DHARRISON-LTO0015269 - 11/05/13-14 (SCOTTSDALE) BKM'D & HILITED
 04-27-15 DHARRISON - Sent supplemental em to Ryan Gilmore regarding coverage.
 04-27-15 *DOC DHARRISON-4/27/15 EM TO RYAN GILMORE - COVERAGE(2ND SUPPLEMENTAL)
 05-01-15 DHARRISON - Reviewed file. I have submitted this file to Legal for
 coverage review in 3 separate EMs dated 4/22, 4/24 & 4/27. I am currently
 waiting for a response from Legal regarding the coverage & primary/excess
 issues.
 *** REVIEW DIARY DATE SET FOR 05/06/2015 FOR DHARRISON. ***
 05-04-15 *DOC DHARRISON-5/04/15 RYAN GILMORE EM - COVERAGE
 05-04-15 DHARRISON - Reviewed & noted above. Sent EM to Ryan & Pat asking if
 they are available to meet on Wednesday.
 05-04-15 DHARRISON - Meeting to discuss this file has been set Wednesday @
 9:30 AM in Rick's conference room.

EXHIBIT 7



DATE: 2/27/2017

NATIONAL AMERICAN INSURANCE CO
NOTE PAD LISTING AS OF 10:54:04PMR0015
PAGE: 2POLICY : MP10570130 -
CLAIM : BA140707

*** REVIEW DIARY DATE SET FOR 05/11/2015 FOR DHARRISON. ***

05-06-15 *DOC DHARRISON-4/30-5/05/15 E-MAILS (11) SETTING MEETING

05-06-15 DHARRISON - Discussed file in meeting with Rick, Tony, Pat, Ryan, James B & James M. Pat will draft letter for my signature in response to the tender.

*** REVIEW DIARY DATE SET FOR 05/13/2015 FOR DHARRISON. ***

05-07-15 DHARRISON - Discussed with Pat at the Senior meeting. He is working on letter.

*** REVIEW DIARY DATE SET FOR 05/15/2015 FOR DHARRISON. ***

05-08-15 DHARRISON - Reviewed initial draft prepared by Pat Gilmore. Made 1 addition and sent to Pat in red-lined version.

05-08-15 DHARRISON - Pat called to discuss my change. He may incorporate into his draft with some minor changes. He is continuing work on the letter.

05-08-15 *DOC DHARRISON-5/07/15 PAT GILMORE MEMO RE PRIOR CLAIM NOT REPORTED

05-08-15 *DOC DHARRISON-5/08/15 EM TO PAT GILMORE RE CLAIMS HISTORY

05-08-15 DHARRISON - Received final draft of RORL. Updated with CC info and sent to Cheryll Griggs for printing.

*** REVIEW DIARY DATE SET FOR 05/18/2015 FOR DHARRISON. ***

05-11-15 DHARRISON - Received printed letter. I forgot to update the RE: information on the first page. Updated letter & sent to Cheryll to print.

05-11-15 DHARRISON - Signed & scanned letter. Gave original to Tracy Beall to mail. Sent copies by EM to: J Stephanie Krmpotic, Woods Insurance Service, ABC Concrete Mfg Co. and James Malone.

05-11-15 *DOC DHARRISON-5/11/15 ABC RORL TO KRMPOTIC

05-11-15 *DOC DHARRISON-5/11/15 EM DISTRIBUTING COPIES OF ABC RORL TO KRMPOTIC

05-11-15 DHARRISON - Reviewed & noted above. RORL has been mailed.

*** REVIEW DIARY DATE SET FOR 06/17/2015 FOR DHARRISON. ***

05-13-15 *DOC DHARRISON-5/11/15 CERT MAIL RECEIPT FOR MAILING RORL TO KRMPOTIC

05-20-15 *DOC DHARRISON-5/14/15 SIGNED RECEIPT FOR ABC RORL TO KRMPOTIC

05-21-15 DHARRISON - Michael Heifort w/ National Casualty called. Wanted to know why we felt our policy did not apply. NAICO's coverage symbol for liability is 1 and our insured owns the vehicle. It appears to him that the NAICO policy applies and that NAICO is primary. Advised him I would discuss w/ Legal and get back to him in a few days. His number is 651-252-3151.

05-22-15 *DOC DHARRISON-5/22/15 EM TO PAT & RYAN REQUESTING MEETING

05-22-15 DHARRISON - Exchanged EMs and discussed with Rick & Tony. Meeting is set Tuesday, 5/26/15 @ 9:30 AM in Rick's conference room. Added to my Lotus calendar.

*** REVIEW DIARY DATE SET FOR 05/26/2015 FOR DHARRISON. ***

05-26-15 DHARRISON - Cheryll called. Rick delayed due to travel problems. He will not be in the office until noon. I need to reschedule the meeting. Rescheduled for 2:00 PM today and sent confirming EMs to all. Pat, Ryan & Tony have acknowledged that they are available for the new time. Updated my Lotus calendar.

05-26-15 DHARRISON - Discussed file in meeting with Pat, Ryan, Rick, Tony, Tracie & James M. Policy does not apply because it was issued w/ sym 1 in error. Should have been 7,8&9. UW has reformed the current policy. We are not issuing change on this policy because it has expired. However, if we are pushed &/or sued for coverage, we will counter with a dec action to reform. I

DATE: 2/27/2017

NATIONAL AMERICAN INSURANCE CO
NOTE PAD LISTING AS OF 10:54:04PMR0015
PAGE: 3POLICY : MP10570130 -
CLAIM : BA140707

will advise Heifort of our position. We will not participate in defense and will not take any further action unless pushed by National Casualty or Insured.

05-28-15 DHARRISON - Discussed with Tony. In the meeting, we discussed that someone should call Bunky (agent) to see if they are the agent on the Nat Cas policy and if so, request a copy of the application submitted. It was my understanding that James M or Tony would call agent. However, Rick wanted me to make the call. I will call Bunky today.

05-28-15 DHARRISON - Called Bunky Owen @ Woods Insurance Service, Inc.: 505-326-1111. L/M.

05-29-15 DHARRISON - Called Bunky Owen. L/M.

*** REVIEW DIARY DATE SET FOR 06/02/2015 FOR DHARRISON. ***

05-29-15 DHARRISON - Bunky Owen called. He wasn't aware of claim. I went over the issues that are going on and explained why we wanted National Casualty's application. He doesn't recall, but doesn't think they were the broker of Septic's coverage. He will check their files and call me back.

05-29-15 DHARRISON - Bunky Owen called. They were not the agent for Septic's policy with National Casualty. Bunky asked for copies of correspondence for his file.

05-29-15 *DOC DHARRISON-5/29/15 EM TO BUNKY OWEN - COPIES OF LETTERS

06-02-15 DHARRISON - Discussed with Jackie w/ Woods Insurance. She had some questions regarding this claim. NAICO has cancelled the current policy effective 6/06/15.

06-02-15 DHARRISON - Discussed above with Pat Gilmore. He will call Bunky. Pat asked for copies of cancellation docs for his file.

06-02-15 *DOC DHARRISON-6/02/15 EM TO PAT GILMORE - CANCELLATION DOCS

06-03-15 DHARRISON - Discussed with Pat Gilmore. He will be discussing this file in Senior today. He asked for a copy of the letter mailed to Low Ball. Sent copy to Pat by EM.

*** REVIEW DIARY DATE SET FOR 06/08/2015 FOR DHARRISON. ***

06-03-15 DHARRISON - Discussed file in Senior meeting. Due to info provided by agent in EMs exchanged with UW during the application process and some incorrectly answered questions on the application, it is our position that the policy should have been issued with symbols 7,8&9 instead of 1 for liability. If the policy had been issued correctly, NAICO would have not coverage. Our position will be our policy does not apply. If Scottsdale pursues further, we will file a Dec Action to reform the policy.

06-04-15 DHARRISON - Called Michael Heifort. Explained our position. He will pass it on up the chain of command and go from there.

*** REVIEW DIARY DATE SET FOR 06/17/2015 FOR DHARRISON. ***

06-08-15 *DOC DHARRISON-6/05/15 PAT GILMORE EM - INSD HAS NEW AGENT

06-10-15 DHARRISON - Reviewed file.

*** REVIEW DIARY DATE SET FOR 07/22/2015 FOR DHARRISON. ***

06-17-15 REVANS Note - ins'd changed agents.. Not sure we have much leverage as to affidavit from Ins'd on coverage application

07-01-15 REVANS Dick -- Thought we were going to contact the insured about an affidavit that other policy was to be applicable? Did I misunderstand?

*** NOTEPAD REVIEW REQ. CREATED ON 07/01/2015 BY REVANS. SENT TO DHARRISON. ***

07-03-15 DHARRISON - Reviewed & noted above.

DATE: 2/27/2017

NATIONAL AMERICAN INSURANCE CO
NOTE PAD LISTING AS OF 10:54:04PMR0015
PAGE: 4POLICY : MP10570130 -
CLAIM : BA140707

Rick: No. You did not misunderstand. The agent is going to try to get the insured to sign the form that Pat Gilmore provided to the agent. Pat was the one who talked to the agent about this. I will follow-up with Pat next week. Dick

*** NOTEPAD REVIEW REQ. CREATED ON 07/03/2015 BY DHARRISON. SENT TO REVANS. ***

*** REVIEW DIARY DATE SET FOR 07/08/2015 FOR DHARRISON. ***

07-06-15 DHARRISON - Discussed with Pat Gilmore during a meeting on another file. He has not heard from the agent since their 6/05/15 EM. He will call the agent to follow-up.

07-09-15 *DOC DHARRISON-7/08/15 RPG EM FWD'G AGENT'S EM - AFFIDAVIT NOT SIGNED

07-09-15 DHARRISON - Reviewed & noted above. Insured is out of town for three months. Insured has new agent, our agent suggests the adjuster try to get the affidavit signed during the investigation. I will discuss with James Malone. Sent IM to James to drop by my office.

07-09-15 DHARRISON - Discussed above with James Malone. He will see if the insured principal will sign the affidavit.

07-09-15 DHARRISON - Affidavit not in file. I will need to get from Legal.

07-13-15 *DOC DHARRISON-7/13/15 JANET TAYLOR EM - 6/3/15 LETTER & AFFIDAVIT

07-13-15 DHARRISON - Sent IM to James Malone that Affidavit is now in file.

07-15-15 DHARRISON - Reviewed F9 from James Malone on claim notepad. The insured has declined to sign the affidavit.

07-15-15 DHARRISON - Sent EM to Pat Gilmore w/ copies of Doug Murray's EMs & asking Pat opinion regarding how to proceed. CCed Ryan & CMG

07-15-15 *DOC DHARRISON-7/15/15 EM TO PAT GILMORE W/ DOUG MURRAY'S EMAILS

07-15-15 *DOC DHARRISON-7/15/15 RPG EM - WE SHOULD WAIT TO SEE WHAT HAPPENS

07-15-15 DHARRISON - Reviewed & noted above.

*** REVIEW DIARY DATE SET FOR 08/19/2015 FOR DHARRISON. ***

08-11-15 DHARRISON - Reviewed file. Still no response from Scottsdale.

*** REVIEW DIARY DATE SET FOR 10/21/2015 FOR DHARRISON. ***

10-15-15 DHARRISON - Reviewed file.

*** REVIEW DIARY DATE SET FOR 12/23/2015 FOR DHARRISON. ***

11-05-15 *DOC DHARRISON-11/05/15 NCC LETTER: 1/05/16 MEDIATION & SETTLEMENT

11-05-15 DHARRISON - Reviewed & noted above. NCC is looking to NAICO to participate in settlement at mediation as a co-primary insurer. They are going after NAICO for reimbursement if we do not participate. Sent email to Ryan Gilmore with a copy of the letter. CCed Pat Gilmore & CMG.

11-05-15 *DOC DHARRISON-11/05/15 EM TO RYAN GILMORE W/ NCC LETTER

11-05-15 DHARRISON - Reviewed & noted above. Response from Legal pending.

*** REVIEW DIARY DATE SET FOR 11/18/2015 FOR DHARRISON. ***

11-06-15 *DOC DHARRISON-11/05/15 RYAN GILMORE EM - NEED TO MEET TO DISCUSS

11-06-15 DHARRISON - Discussed with Pat Gilmore after the Senior meeting yesterday PM. He told Ryan to review and then get Pat up to speed on this. We can set meeting after that.

11-06-15 DHARRISON - Sent email to Ryan asking him to let me know when he & Pat are ready so that I can set up a meeting.

11-06-15 *DOC DHARRISON-11/06/15 EM TO RYAN GILMORE RE MEETING

11-20-15 DHARRISON - Reviewed file on diary. Still waiting for Legal to advise when they are ready to discuss this file in a meeting.

*** REVIEW DIARY DATE SET FOR 11/30/2015 FOR DHARRISON. ***

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

NATIONAL AMERICAN INSURANCE COMPANY,

Plaintiff,

vs.

No. 1:15-cv-01169 KG-KBM

ABC CONCRETE MFG. CO., INC.;
ABC CONCRETE MFG. CO., INC.,
d/b/a ABC SEPTIC SYSTEMS, INC.;
NICHOLAS MONTANO;
SCOTTSDALE INSURANCE COMPANY;
and NATIONAL CASUALTY COMPANY,

Defendants.

**PLAINTIFF NATIONAL AMERICAN INSURANCE COMPANY'S RESPONSES
TO DEFENDANT NATIONAL CASUALTY COMPANY'S
FIRST REQUESTS FOR ADMISSION**

COMES NOW, Plaintiff National American Insurance Company, by and through its attorneys of record, Butt Thornton & Baehr PC (James H. Johansen), and for its Responses to Defendant National Casualty Company's First Requests for Admission, states as follows:

REQUEST NO. 1. Admit that Woods Insurance Service, Inc. was an agent of both NAICO and ABC Concrete with regard to the procurement of the subject policy.

RESPONSE: Admit.

REQUEST NO. 31. Admit that NAICO did not rely upon any information from the FMCSA website found at www.saferysys.org in the underwriting of the NAICO policy at issue.

RESPONSE: Admit.

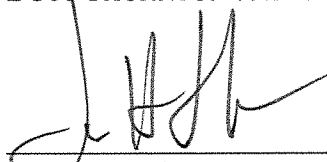
REQUEST NO. 32. Admit that Nicholas Montano was issued a federal W-2 form or a federal 1099 form from ABC Concrete for his work for ABC Concrete in 2014.

RESPONSE: Admit.

REQUEST NO. 33. Admit that, with respect to the allegations in paragraph 40 of NAICO's amended complaint, NAICO is not suggesting that Woods Insurance Service, Inc. or ABC Concrete asked that the inclusion of the Freight liner on the NAICO policy be backdated to the date of the accident or before the date of the accident.

RESPONSE: Admit.

BUTT THORNTON & BAEHR PC



James H. Johansen
Attorneys for Plaintiff
National American Insurance Company
P.O. Box 3170
Albuquerque, NM 87190
Telephone: (505) 884-0777
jhjohnansen@btblaw.com

DATE: January 13, 2017

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

NATIONAL AMERICAN INSURANCE COMPANY,

Plaintiff,

vs.

No. 1:15-cv-01169 KG-KBM

ABC CONCRETE MFG. CO., INC.;
ABC CONCRETE MFG. CO., INC.,
d/b/a ABC SEPTIC SYSTEMS, INC.;
NICHOLAS MONTANO;
SCOTTSDALE INSURANCE COMPANY;
and NATIONAL CASUALTY COMPANY,

Defendants.

**PLAINTIFF NATIONAL AMERICAN INSURANCE COMPANY'S ANSWERS TO
DEFENDANT NATIONAL CASUALTY COMPANY'S FIRST INTERROGATORIES**

COMES NOW, Plaintiff National American Insurance Company, by and through its attorneys of record, Butt Thornton & Baehr PC (James H. Johansen), and for its Answers to Defendant National Casualty Company's First Interrogatories, states as follows:

INTERROGATORY NO. 1. To the extent NAICO denied any request for admission contained in NCC's First Requests for Admission to NAICO, please identify the bases for such denial and any fact or item of real or documentary evidence that supports such contention.

ANSWER:

Request No. 5: NAICO was not aware that at the time it had agreed to provide coverage for ABC Concrete under the policy in effect at the time of the 8/7/14 accident, that ABC Concrete had interstate authority from the FMCSA to operate as a private motor carrier.

Request No. 6: NAICO would have only reviewed information from the FMCSA website had NAICO known that ABC Concrete was a motor carrier.

Request No. 7: NAICO would have only reviewed information from the FMCSA website had NAICO known that ABC Concrete was a motor carrier.

Request No. 8: NAICO never intended for its policy to cover autos that were being used by ABC Concrete to operate as a private motor carrier in interstate commerce.

Request No. 9: NAICO was not aware that ABC Concrete had authority to operate as a private motor carrier. NAICO intended their policy to cover “all autos” but not those operating “for hire.”

Request No. 11: NAICO was unaware of “the numerous trips to/from Ft. Bliss, Texas and Naco, Arizona, performed in 2014,” but acknowledges that there would be coverage absent reformation based upon the mutual mistake of the parties.

Request No. 12: NAICO is seeking, among other things, a Judgment to reform the NAICO policy to limit liability coverage to “Specifically Described ‘Autos’” that were not intended to be used as for-hire, long-haul, interstate trucking.

Request No. 13: NAICO is seeking, among other things, a Judgment to reform the NAICO policy to limit liability coverage to “Specifically Described ‘Autos’” that were not intended to be used as for-hire, long-haul, interstate trucking.

Request No. 14: NAICO is unaware if any of the scheduled autos that were not intended to be used as for-hire, long-haul, interstate trucking were mechanically or administratively capable of transporting goods in interstate commerce.

Request No. 15: NAICO is unaware if any of the scheduled autos that were not intended to be used as for-hire, long-haul, interstate trucking were mechanically or administratively capable of transporting goods in interstate commerce.

Request No. 20: NAICO did not intend to insure “trucks operated under ABC Concrete’s authority as a private, interstate motor carrier.”

Request No. 25: NAICO was under the belief, as was Doug Murray, that ABC Septic was not “doing business as” ABC Concrete but rather the entities were distinct legal entities.

Request No. 28: NAICO has no way of knowing if Doug Murray had changed the substantive content of his website during any relevant time period.

Request No. 29: NAICO’s underwriting protocols did not require NAICO to review a proposed insured’s website as part of the process of determining whether NAICO will issue a policy to the potential insured.

Request No. 30: NAICO did not know that ABC Concrete was a “for-hire” motor carrier. NAICO directs counsel to its Response to Request No. 6 and 29.

INTERROGATORY NO. 2. Please specify whether NAICO’s underwriting department made any attempt to verify whether ABC Concrete and ABC Septic Systems were or were not separate legal entities before issuing the subject policy. If there was any attempt, please specify each act taken by NAICO identifying the act by person performing the act, when the act was performed and identify any item of real or documentary evidence that was produced or reviewed as a result of such act.

ANSWER: NAICO's underwriting department did not attempt to verify whether ABC Concrete and ABC Septic Systems were or were not separate legal entities. NAICO relied on the representations made to it by Doug Murray.

INTERROGATORY NO. 3. Please specify all efforts by NAICO to determine the identity of the "separate operation" and/or to review the "separate insurance policy" referred to in Paragraph 25 of NAICO's Amended Complaint. If there was any act by NAICO responsive hereto, please specify each act taken by NAICO identifying the act by person performing the act, when the act was performed and identify any item of real or documentary evidence that was produced or reviewed as a result of such act.

ANSWER: No efforts were taken.

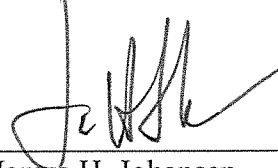
INTERROGATORY NO. 4. Please identify any exclusion issued by or relied upon by NAICO that precludes or in any way limits coverage for "for -hire" operations of a motor carrier in the last 20 years.

ANSWER: Please see NAICO 004649-4683. Additionally, NAICO may have created manuscript exclusions for insureds over the span of the last twenty years, but NAICO has no practical or efficient way to search for those manuscript exclusions.

INTERROGATORY NO. 7. Please specify each action or inaction of Woods Insurance Service, Inc. that was inappropriate.

ANSWER: NAICO objects to Interrogatory No. 7 on the grounds that the term “inappropriate” is overly broad and vague. *See* Rule 26(b)(1). NAICO does not contend that actions undertaken by Woods Insurance Service, Inc. were “inappropriate,” but NAICO does contend that information provided to NAICO did not properly represent the risks associated with ABC Concrete’s operation.

BUTT THORNTON & BAEHR PC



James H. Johansen
Attorneys for Plaintiff
National American Insurance Company
P.O. Box 3170
Albuquerque, NM 87190
Telephone: (505) 884-0777
jhhohansen@btblaw.com

DATE: January 13, 2017

VERIFICATION

R. Patrick Gilmore affirms, under penalty of perjury under the laws of the State of New Mexico, the following to be true and correct:

That he is General Counsel with National American Insurance Company, that he has read over, knows and understands the contents of the foregoing Answers to Defendant National Casualty Company's First Interrogatories, and that the statements therein made are true and correct to the best of his knowledge, except those statements that are made upon information and belief, and as to those he believes them to be true.



R. PATRICK GILMORE
General Counsel
National American Insurance Company

PR#119220

MARSHALL, ANITA

2/28/2017

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

NATIONAL AMERICAN INSURANCE
COMPANY,

Plaintiff,

vs.

No. 1:15-CV-01169-KG-KBM

ABC CONCRETE MFG., CO., INC.;
ABC CONCRETE MFG. CO., INC.
d/b/a ABC SEPTIC SYSTEMS,
INC.; NICHOLAS MONTANO;
SCOTTSDALE INSURANCE COMPANY
and NATIONAL CASUALTY COMPANY,
Defendants.

DEPOSITION OF ANITA MARSHALL
TAKEN ON BEHALF OF THE DEFENDANTS
ON FEBRUARY 28, 2017 AT 1:15 PM
IN OKLAHOMA CITY, OKLAHOMA

APPEARANCES

On behalf of the PLAINTIFF:

James H. Johansen
BUTT, THORNTON & BAEHR, P.C.
4101 Indian School Road, NE, Suite 300
Albuquerque, New Mexico 87110
505.884.0777
jhjohansen@btblaw.com

On behalf of the PLAINTIFF:

R. Patrick Gilmore
NATIONAL AMERICAN INSURANCE COMPANY
1010 Manvel Avenue
Chandler, Oklahoma 74834
405.258.4262
pgilmore@naico.com

(Appearances continued on Page 2.)

REPORTED BY: Jody Graham, CSR, RPR, RMR, CRR

PR#119220

MARSHALL, ANITA

2/28/2017

<p>1 Q And when you were underwriting the policy 2 that we're here about today, you knew that Concrete 3 operated heavy tractor-trailers; right? 4 A They had it listed on the schedule. 5 Q Okay. So you knew that. And did you also 6 know that they operated in interstate commerce? 7 A That they traveled, yes. 8 Q Across state lines? 9 A Yes. 10 Q Okay. And what was your understanding about 11 the radius of their operations? 12 A I believe the application said 50-mile 13 radius. 14 Q Okay. And did you rely upon that in 15 underwriting this policy? 16 A Yes. 17 Q If they had said that they had a 500-mile 18 radius, would you have written this policy? 19 MR. JOHANSEN: Object to the form. 20 Foundation, answer if you can. 21 THE WITNESS: I don't know if it would have 22 changed anything. It might have. 23 Q (BY MR.McMICKLE) Do you have any reason 24 to believe it would have changed anything, or would 25 it have been the same?</p> <p style="text-align: center;">10</p>	<p>1 A I would -- I would decline it as an 2 underwriter. 3 Q If what? 4 A If it was for-hire. 5 Q Why? 6 A Because we don't do for-hire trucking. 7 Q Well, do you do private trucking? 8 A If they're hauling their own goods. A lot 9 of companies do haul their own goods. 10 Q Okay. So have you -- what's the difference 11 between for-hire motor carriage and private motor 12 carriage other than who owns the goods that are on the 13 truck? 14 A I don't know what you're asking me. 15 Q In your mind -- or, well, are you aware of 16 any material distinction between for-hire motor 17 carriage and private motor carriage from an insurance 18 risk perspective? 19 MR. JOHANSEN: Object to the form. 20 Foundation. You can answer if you can. 21 THE WITNESS: I would say it would be a 22 bigger -- greater exposure for-hire. 23 Q (BY MR.McMICKLE) Okay. Why? 24 A More on-the-road exposure. 25 Q So is that out of a -- is it your belief</p> <p style="text-align: center;">12</p>
<p>1 A I believe it would have been the same. 2 Q Okay. Do you know the difference between 3 for-hire motor carriage and private motor carriage? 4 A Yes. 5 Q What's the difference? 6 A The for-hire is goods of other people. 7 Q Okay. 8 A And private is your own goods. 9 Q Does NAICO, when it does underwrite someone 10 that operates as a motor carrier, does it distinguish 11 between for-hire motor carriers and private motor 12 carriers? 13 MR. JOHANSEN: Object to the form. 14 Foundation. Answer if you know. 15 THE WITNESS: I don't understand what you're 16 asking me. 17 Q (BY MR.McMICKLE) Have you ever seen NAICO 18 distinguish between insureds in terms of whether or 19 not they're a for-hire motor carrier versus a 20 private motor carrier? 21 A I don't write trucking. 22 Q Okay. 23 A Or for-hire. 24 Q Okay. So is the answer you've never seen 25 any distinction?</p> <p style="text-align: center;">11</p>	<p>1 that for-hire motor carriers are on the road more than 2 private motor carriers? 3 A I would say in some instances. 4 Q Okay. Can you give me any specific instance 5 where you've had that experience? 6 A No. 7 Q Okay. Are you aware that the for-hire motor 8 carrier drivers are subject to the same 9 hours-of-service regulations as the private motor 10 carrier drivers? 11 A No. 12 Q Okay. If that is, in fact, true, would your 13 statement about more hours, would that -- what I'm 14 looking for is what is it that supports this argument 15 or suggestion that for-hire is different because it 16 involves more hours? 17 MR. JOHANSEN: Object to the form. 18 Foundation. 19 THE WITNESS: I don't know. 20 Q (BY MR.McMICKLE) Okay. Have you ever 21 seen anything in any underwriting guideline, 22 bulletin, rule, et cetera within NAICO that says, 23 "We don't insure for-hire motor carriers"? 24 A I don't know. 25 Q Have you ever had any discussion with</p> <p style="text-align: center;">13</p>

PR#119220

MARSHALL, ANITA

2/28/2017

<p>1 A For-hire?</p> <p>2 Q -- for-hire at least being rated.</p> <p>3 A No. Then I misunderstood the question.</p> <p>4 Q Okay. How do you know that the rating for</p> <p>5 for-hire motor carriers is different or higher than</p> <p>6 for private motor carriers?</p> <p>7 A I don't.</p> <p>8 Q Okay. When NAICO -- and you want to talk</p> <p>9 about somebody that's operating as a long-haul</p> <p>10 trucker, okay, with "long-haul" being the word I'm</p> <p>11 trying to define. How do you define long-haul?</p> <p>12 MR. JOHANSEN: Object to the form.</p> <p>13 Foundation. Answer if you can.</p> <p>14 THE WITNESS: Over 200 miles.</p> <p>15 Q (BY MR.McMICKLE) So if somebody told you</p> <p>16 that they're regularly going 150 miles, that</p> <p>17 wouldn't be long-haul for you?</p> <p>18 A No.</p> <p>19 Q Okay. If somebody were to tell you that,</p> <p>20 "Our normal radius of operations is, say, 150 miles,"</p> <p>21 would that suggest to you that there were occasions</p> <p>22 that they went beyond the 150 miles?</p> <p>23 A I don't know how I'd know that.</p> <p>24 Q Okay. Did you know at the time that you</p> <p>25 underwrote the policy that's at issue that Concrete</p> <p style="text-align: center;">18</p>	<p>1 Foundation. You can answer if you can.</p> <p>2 THE WITNESS: I don't know.</p> <p>3 Q (BY MR.McMICKLE) I'm going to show you</p> <p>4 Exhibit KK. Is that a document you're familiar</p> <p>5 with?</p> <p>6 A Yes. These are in the file.</p> <p>7 Q Okay. And are these -- on page 2, is that</p> <p>8 the checklist that you and/or Misty Molloy were to</p> <p>9 follow with regard to the renewal of this policy?</p> <p>10 MR. JOHANSEN: Object to the form.</p> <p>11 THE WITNESS: This was a renewal process</p> <p>12 checklist.</p> <p>13 Q (BY MR.McMICKLE) Okay.</p> <p>14 A Not every item has to be done on every file.</p> <p>15 Q Well, how do you know which items have to be</p> <p>16 done and which items don't have to be done?</p> <p>17 A During the renewal process you should be</p> <p>18 able to tell when you have the file in front of you.</p> <p>19 Q Okay. Would there be some communication</p> <p>20 from you to Misty Molloy about, "Hey, I know the list</p> <p>21 says all these things, but only do a certain subset of</p> <p>22 those things"?</p> <p>23 A No.</p> <p>24 Q Okay. How is it that you communicate to</p> <p>25 Misty Molloy that some of the things that she's tasked</p> <p style="text-align: center;">20</p>
<p>1 operated in multiple states and had a radius -- a</p> <p>2 normal radius of operations of 150 miles?</p> <p>3 A Not at the initial underwriting.</p> <p>4 Q If you had known that at the initial</p> <p>5 underwriting, would you have issued this policy?</p> <p>6 MR. JOHANSEN: Object to the form.</p> <p>7 Foundation. You can answer if you can.</p> <p>8 THE WITNESS: For ABC Concrete?</p> <p>9 Q (BY MR.McMICKLE) Correct.</p> <p>10 A Hauling Concrete products? Their own goods?</p> <p>11 Q (Nodding head.)</p> <p>12 A I don't think that it would have made any</p> <p>13 difference if they occasionally went over the 50-mile</p> <p>14 radius.</p> <p>15 Q Well, you were told in the loss control</p> <p>16 survey that the normal radius of operations was</p> <p>17 150 miles; right?</p> <p>18 MR. JOHANSEN: Object to the form.</p> <p>19 Foundation. You can answer if you can.</p> <p>20 THE WITNESS: After --</p> <p>21 Q (BY MR.McMICKLE) I wasn't through with my</p> <p>22 question. If you had known that when you were</p> <p>23 underwriting this policy, would you have issued the</p> <p>24 policy?</p> <p>25 MR. JOHANSEN: Object to the form.</p> <p style="text-align: center;">19</p>	<p>1 with here she doesn't have to do?</p> <p>2 A It's part of their training as an assistant.</p> <p>3 Q Okay. And is that training anything that</p> <p>4 might be in writing?</p> <p>5 A No. That's what this checklist process is,</p> <p>6 is for an assistant to be able to look at the document</p> <p>7 and determine what needs to be done to renew the file.</p> <p>8 Q Okay. So some of these things need to be</p> <p>9 done and some of these don't?</p> <p>10 A That's correct.</p> <p>11 Q All right. And Misty Molloy is to do some</p> <p>12 of these things and not do some of these things based</p> <p>13 upon her experience and training?</p> <p>14 A That's correct.</p> <p>15 Q All right. So, for example, was she</p> <p>16 supposed to get a Safer report for this insured?</p> <p>17 A This file didn't have a Safer report in it</p> <p>18 initially or a filing, therefore she wouldn't have</p> <p>19 ordered one at renewal.</p> <p>20 Q Okay. So you're saying by her experience</p> <p>21 and training she knew that a Safer report was not</p> <p>22 needed?</p> <p>23 A She would not have pulled one.</p> <p>24 Q Okay. I mean, is that, like, a direction</p> <p>25 from you; or is that just something she would have</p> <p style="text-align: center;">21</p>

PR#119220

MARSHALL, ANITA

2/28/2017

<p>1 Did you ask any questions about what 2 "separate operation" meant? 3 A I didn't ask any questions about it. 4 Q Okay. Did you assume that that meant a 5 separate company, separate legal entity? 6 A I understood it that way, yes. 7 Q Okay. I want you to flip over to 8 Exhibit GG. I tell you what, before we -- well, we'll 9 go there. Put this pencil there. 10 MR. JOHANSEN: Did you say you were on GG? 11 MR.McMICKLE: Correct. 12 Q (BY MR.McMICKLE) Do you consider Woods 13 Insurance Agency to be a representative of both 14 NAICO and the insured? 15 A Yes. 16 Q Okay. And would you expect Woods to 17 communicate to you information that it had regarding 18 Concrete operations that was material to the risk? 19 A Yes. 20 Q Okay. Read through Exhibit GG, just this 21 top part, if you will. And I'll submit to you just to 22 kind of get you going, is that Amanda Gill is 23 responding to Nichole Cottingham. Do you know who 24 that is? 25 A Yeah. She's a CSR at Woods.</p> <p style="text-align: center;">26</p>	<p>1 that the long-haul trucking operation is conducted 2 under the same name, would you have issued this 3 policy? 4 A We wouldn't. 5 Q So the answer's no? 6 A No. We would have declined. 7 Q Do you feel like -- well, let's leave it 8 there. And is it -- let's see. Exhibit XX. Is 9 Exhibit XX an email chain or exchange you had with 10 Nichole Cottingham? 11 A Yes. 12 Q And were you, in fact, looking at ABC 13 Concrete's website around December 19 of 2012? 14 A The email says I did. I don't remember it 15 specifically. 16 Q Okay. Does that refresh your recollection? 17 We're looking at Exhibit X. 18 MR. JOHANSEN: Object to the form. Lack of 19 foundation, misleading. 20 MR.McMICKLE: Just asking if she's seen it. 21 Q (BY MR.McMICKLE) Have you seen Exhibit X? 22 A I saw it yesterday. 23 Q Okay. Well, we asked -- was this in your 24 underwriting file? 25 A At what time was it in our underwriting</p> <p style="text-align: center;">28</p>
<p>1 Q Okay. And what's happened is Nichole 2 Cottingham has pushed out a email looking for somebody 3 to provide coverage to Concrete. And this lady, 4 Amanda Gill, at EMC is responding; okay? Read that 5 first paragraph there or the first two paragraphs. 6 A (Witness complies.) 7 Q Look at the date on that, if you would. 8 A (Witness complies.) 9 Q That's November 10th; right? 10 A Correct. 11 Q And then on November 26th, so couple weeks 12 later, she sends somebody at NAICO this email that's 13 Exhibit Q. Does that appear to be the case? 14 A Yes. 15 Q Okay. So in Exhibit GG she is specifically 16 told by EMC that the trucking operation -- the 17 long-haul trucking operation is conducted under the 18 same name. Do you see that? 19 A I do see it. 20 Q But here she says it's a separate operation. 21 Is that misleading to you? 22 MR. JOHANSEN: Object to the form. 23 Foundation. 24 THE WITNESS: I wasn't aware of it. 25 Q (BY MR.McMICKLE) If you had been aware</p> <p style="text-align: center;">27</p>	<p>1 file? 2 Q Okay. You told me earlier today that the 3 only documents you reviewed are documents in your 4 underwriting file; right? 5 A That's correct. I -- you know, you have to 6 click on a document and open it up. I did not click 7 on every single document and open it up so I couldn't 8 tell you if that is in our file or not. 9 Q Okay. I'm sorry. I thought -- 10 A That I reviewed. 11 Q I thought I understood you to just say that 12 you saw this document that's Exhibit X yesterday. 13 A Yesterday. 14 Q Is that true? 15 A Yes, it is. 16 Q Okay. And did you that see while you were 17 looking in the underwriting file as you described 18 earlier? 19 THE WITNESS: When I was reviewing -- 20 MR. JOHANSEN: What time are you talking 21 about because you're trying to mislead the witness 22 here. 23 MR.McMICKLE: You need to be careful about 24 what you claim. 25 MR. JOHANSEN: Yeah. Well, no, I'm claiming</p> <p style="text-align: center;">29</p>

PR#119220

MARSHALL, ANITA

2/28/2017

<p>1 A I did not.</p> <p>2 Q Did you follow up with anybody at Woods to</p> <p>3 your recollection about five semi trucks that deliver</p> <p>4 products all over the United States?</p> <p>5 A I did not.</p> <p>6 Q Okay. Did you ever run any MVRs for the</p> <p>7 Concrete drivers?</p> <p>8 A I don't run MVRs, and I don't remember</p> <p>9 seeing any in file.</p> <p>10 Q Okay. Why don't you flip over. If we go to</p> <p>11 Exhibit R. Does Exhibit R appear to be an</p> <p>12 application?</p> <p>13 A It's a contractor supplemental.</p> <p>14 Q Is this something that you would have relied</p> <p>15 upon in the underwriting process?</p> <p>16 MR. JOHANSEN: Object to the form.</p> <p>17 Foundation.</p> <p>18 THE WITNESS: Sometimes we get this prior to</p> <p>19 underwriting a file. Sometimes it's given at binding,</p> <p>20 information.</p> <p>21 Q (BY MR.McMICKLE) Okay. Have you ever</p> <p>22 seen NAICO use a radius exclusion?</p> <p>23 A Never seen it.</p> <p>24 Q Okay. Have you ever heard of NAICO using a</p> <p>25 radius exclusion?</p> <p style="text-align: center;">34</p>	<p>1 the Federal Motor Carrier Safety Administration,</p> <p>2 would you have written this policy?</p> <p>3 A Yes.</p> <p>4 Q Okay. If you had known that ABC Concrete</p> <p>5 represented to the FMCSA that its trucks operated</p> <p>6 approximately 210,000 miles -- let's say this was 2013</p> <p>7 or '14. It says '15, but just assume that there was a</p> <p>8 Safer report that says 210,000 miles in 2013 or '14;</p> <p>9 okay? If you had seen that, would you have issued</p> <p>10 that policy?</p> <p>11 A I didn't see it prior to.</p> <p>12 Q Okay. And I understand that. What I'm</p> <p>13 saying is if you had seen it.</p> <p>14 MR. JOHANSEN: Object to the form.</p> <p>15 Foundation.</p> <p>16 Q (BY MR.McMICKLE) You can answer.</p> <p>17 A I don't know that it would have made a</p> <p>18 difference.</p> <p>19 MR. JOHANSEN: While you're doing that,</p> <p>20 let's take a break for a few minutes.</p> <p>21 (A recess was taken from 2:00 PM to</p> <p>22 2:09 PM.)</p> <p>23 Q (BY MR.McMICKLE) Was it important to you</p> <p>24 in the underwriting of this policy that Concrete</p> <p>25 identify all trucks that it owned in the</p> <p style="text-align: center;">36</p>
<p>1 A I've never heard of it.</p> <p>2 Q Do you know what I'm talking about when I</p> <p>3 say a "radius exclusion"?</p> <p>4 A No, I don't.</p> <p>5 Q Okay. Have you ever seen an exclusion for</p> <p>6 for-hire trucking that says, "We don't cover a loss if</p> <p>7 it involves for-hire trucking"?</p> <p>8 A Have I ever seen it? No.</p> <p>9 Q Okay. Have you ever heard of any kind of</p> <p>10 exclusion or endorsement like that?</p> <p>11 A No.</p> <p>12 Q I'm going to show you what's been marked as</p> <p>13 Exhibit T. And I'll submit to you that this is some</p> <p>14 Safer data on ABC Concrete. If you had known that ABC</p> <p>15 Concrete had private authority to operate in</p> <p>16 interstate commerce from the Federal Motor Carrier</p> <p>17 Safety Administration, would you have issued this</p> <p>18 policy?</p> <p>19 MR. JOHANSEN: Object to the form.</p> <p>20 Foundation. You can answer if you can.</p> <p>21 THE WITNESS: I don't understand what you're</p> <p>22 asking.</p> <p>23 Q (BY MR.McMICKLE) If, when you underwrote</p> <p>24 this policy or issued this policy, you had known</p> <p>25 that Concrete had private interstate authority from</p> <p style="text-align: center;">35</p>	<p>1 application?</p> <p>2 A Yes.</p> <p>3 Q Okay. Why was that important?</p> <p>4 A I believe it's on the application.</p> <p>5 Q Okay. I understand it's in the application.</p> <p>6 We can find it if we want to, but I figured you'd</p> <p>7 know. But my question is is why is it important?</p> <p>8 A I guess I don't understand the question.</p> <p>9 Q Okay. Why is it important to NAICO that the</p> <p>10 insured tell NAICO -- or that an insured identify all</p> <p>11 vehicles that it owns in the application that it</p> <p>12 submits to NAICO?</p> <p>13 A To get the correct premium to know what your</p> <p>14 exposure is.</p> <p>15 Q Okay. Will you pull out Exhibit OO. It's</p> <p>16 somewhere over there.</p> <p>17 MR. JOHANSEN: There aren't very many</p> <p>18 exhibits there. I've got my OO, but where are the</p> <p>19 rest of the exhibits?</p> <p>20 THE REPORTER: It's in there.</p> <p>21 MR. JOHANSEN: I have it. Sorry.</p> <p>22 Q (BY MR.McMICKLE) So there's Exhibit OO.</p> <p>23 Is that an email with an application that you relied</p> <p>24 upon in issuing this policy?</p> <p>25 A It looks like it.</p> <p style="text-align: center;">37</p>

PR#119220

MARSHALL, ANITA

2/28/2017

<p>1 Q Bear with me one second while I get to a 2 page. Okay. Do you see the bottom right-hand corner 3 there's some numbers. Will you go to 3638, please. 4 A (Witness complies.) 5 Q Okay. Do you see that? There at the bottom 6 talks about some general information? 7 A Yes. 8 Q And is that general information material to 9 your underwriting process? 10 A Yes. 11 Q Okay. So, for example, it says, "Are any 12 vehicles leased to others?" And it says, "No." Do 13 you see that, number 4? 14 A Yes. 15 Q If, in fact, Concrete had leased trucks to 16 others, would that have been material to the 17 underwriting process? 18 A They're supposed to explain all "yes" 19 responses. 20 Q Okay. If they had told you that they were 21 leasing trucks to others, would you have still issued 22 this policy? 23 MR. JOHANSEN: Object to the form. 24 Foundation. 25 THE WITNESS: I have no way of knowing.</p> <p style="text-align: center;">38</p>	<p>1 Foundation. 2 THE WITNESS: Seven. 3 MR. JOHANSEN: Go ahead and answer if you 4 can. 5 THE WITNESS: Seven, 8 and 9. 6 Q (BY MR.McMICKLE) That's what you would 7 have issued? 8 A On auto liability, symbol 7. 9 Q Okay. And 8 and 9? 10 A Yes. 11 Q Okay. Would you -- or is it fair for 12 Concrete to expect that Woods would communicate to 13 NAICO what Doug Murray at Concrete had communicated to 14 Woods about Concrete's operations? 15 MR. JOHANSEN: Objection. Form, foundation. 16 THE WITNESS: I rely on the information the 17 agent provides. 18 Q (BY MR.McMICKLE) Okay. And do you feel 19 like Woods was either not completely forthright or 20 in some way misled NAICO in the underwriting of this 21 policy? 22 MR. JOHANSEN: Objection. Form, foundation. 23 THE WITNESS: I don't know. 24 Q (BY MR.McMICKLE) Okay. Based upon what 25 we saw in Exhibit GG and what they told you in</p> <p style="text-align: center;">40</p>
<p>1 Q (BY MR.McMICKLE) Okay. Number 6 says, 2 "Are ICC, PUC or other filings required?" It says, 3 "Yes." Do you see that? 4 A Yes, I do. 5 Q Do you recall there being any kind of 6 discussion between you and the agent about filings? 7 A No. 8 Q Would you have followed up on that since it 9 said, "Yes"? 10 A No. 11 Q Okay. Now, over there at number 13 it says, 12 "Are any vehicles owned but not scheduled in this 13 application?" It says, "No." If they had said, 14 "Yes," what would have happened next? 15 MR. JOHANSEN: Object to the form. 16 Foundation. You can answer if you can. 17 THE WITNESS: We would have changed the auto 18 liability symbol -- 19 Q (BY MR.McMICKLE) What would the auto 20 liability sym -- 21 A -- to a specific -- a 7. 22 Q A symbol 7? 23 A Yeah. 24 Q Would you have included a symbol 8? 25 MR. JOHANSEN: Object to the form.</p> <p style="text-align: center;">39</p>	<p>1 Exhibit R -- excuse me, Exhibit Q -- do you remember 2 that where we talked about separate operations and 3 Exhibit G where they said it was under the same 4 operation? 5 MR. JOHANSEN: Objection. 6 Q (BY MR.McMICKLE) Do you feel like that 7 was misleading? 8 MR. JOHANSEN: Object to the form, 9 foundation. 10 THE WITNESS: I don't know what their intent 11 was. 12 Q (BY MR.McMICKLE) Okay. If you -- do you 13 feel like they should have told you that information 14 that was in Exhibit GG? 15 MR. JOHANSEN: Object to the form. 16 Foundation. You can answer if you can. 17 THE WITNESS: I don't know what their intent 18 was. 19 Q (BY MR.McMICKLE) I'm not asking about 20 their intent. Is that something you would have 21 liked to have known? 22 A Well, I was relying on this email 23 information sheet to provide them. 24 Q Okay. But would you have liked to have 25 known that, in fact, the long-haul trucking</p> <p style="text-align: center;">41</p>

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

NATIONAL AMERICAN INSURANCE COMPANY,

Plaintiff,

-vs-

NO: 1:15:CV-01169-KBM

ABC CONCRETE MFG. CO., INC.,; ABC CONCRETE MFG. CO., INC.
d/b/a ABC SEPTIC SYSTEMS, INC.; NICHOLAS MONTANO; and
NATIONAL CASUALTY COMPANY,

Defendants.

DEPOSITION OF PATRICK GILMORE

November 29, 2017

4:05 p.m.

4101 Indian School Road, Northeast

300 S

Albuquerque, New Mexico 87110

PURSUANT TO THE FEDERAL RULES OF CIVIL
PROCEDURE, this deposition was:

TAKEN BY: SCOTT W. MCMICKLE

ATTORNEY FOR NATIONAL CASUALTY COMPANY

REPORTED BY: Ruth A. Elwell

CCR-RPR

Trattel Court Reporting & Videography

609 12th Street, Northwest

Albuquerque, New Mexico 87102

<p style="text-align: right;">Page 34</p> <p>1 681?</p> <p>2 A. Yes.</p> <p>3 Q. I mean, basically says he believes that "the Court</p> <p>4 will conclude the Scottsdale policy is excess to the NAICO</p> <p>5 policy"; correct?</p> <p>6 A. That's what that says. If you're asking me if that's</p> <p>7 correct that's what it says. That's what it says, yes.</p> <p>8 Q. Yes. I'm not -- yes. Okay. And then he goes on to</p> <p>9 say that he reached this conclusion because he believes</p> <p>10 Concrete is not a motor carrier for-hire; correct?</p> <p>11 A. I think, right. Yeah, he says Concrete is not a motor</p> <p>12 carrier for-hire.</p> <p>13 Q. Okay. What's Ryan's position in the company?</p> <p>14 A. He's associate general counsel.</p> <p>15 Q. Okay. And you would agree with me that then, as now,</p> <p>16 you believed that the NAICO policy would provide coverage</p> <p>17 for the tractor involved in the accident unless the policy</p> <p>18 was reformed; correct?</p> <p>19 A. Yes. The way you phrased the question, "the tractor</p> <p>20 involved in the accident," there was also a trailer, and you</p> <p>21 have other issues that arise out of that. But I agree with</p> <p>22 what you're wanting me to agree with.</p> <p>23 Q. I purposely didn't include the trailer because --</p> <p>24 A. That's a whole different thing.</p> <p>25 Q. I know that it's probably something that's just a</p>	<p style="text-align: right;">Page 36</p> <p>1 guess if what you're telling me is you're saying that he put</p> <p>2 it on formal letterhead and called it a conclusive legal</p> <p>3 opinion I don't see those words and I don't see that.</p> <p>4 A. No. That's not my point.</p> <p>5 Q. Fair enough.</p> <p>6 A. That's not my point. My point is he says it's his</p> <p>7 initial thoughts. And that's what it was. When he says</p> <p>8 that, he's asking for more discussion on it.</p> <p>9 Q. So -- do you have Exhibit WW in front of you?</p> <p>10 A. Yes.</p> <p>11 Q. Will you look at Page 359 Bates number. It's the</p> <p>12 fourth page.</p> <p>13 A. Yes.</p> <p>14 Q. So you say there -- or Dick Harrison says there at the</p> <p>15 top, "Our preliminary examination indicates that the</p> <p>16 freightliner is not listed among the autos to be covered by</p> <p>17 the NAICO policy." Okay.</p> <p>18 A. It doesn't say exactly that. But...</p> <p>19 Q. Well, it says what it says. I'm just trying --</p> <p>20 A. I'm reading it.</p> <p>21 Q. I'm not going to suggest -- try to get a witness to</p> <p>22 say it says something different. I'm trying to get through</p> <p>23 it.</p> <p>24 A. Right.</p> <p>25 Q. Again, your policy is Symbol 1 policy. So the tractor</p>
<p style="text-align: right;">Page 35</p> <p>1 whole other tangent for us. Okay. Because the tractor is</p> <p>2 what's important for this discussion. Would you agree?</p> <p>3 A. Right.</p> <p>4 Q. Okay. So --</p> <p>5 A. Provides coverage for liability.</p> <p>6 Q. Of the named insured and whoever? Any permissive</p> <p>7 user; right?</p> <p>8 A. Right. But not the physical damage.</p> <p>9 Q. None of my questions relate to physical damage. Okay.</p> <p>10 Yeah. So May 4 of '15, your son, the associate general</p> <p>11 counsel, has sent this e-mail indicating his beliefs as to</p> <p>12 whether or not there's coverage and who's primary.</p> <p>13 A. It's his initial thoughts. I have to keep going back</p> <p>14 to that, because there was also a meeting that was scheduled</p> <p>15 to talk about the initial thoughts.</p> <p>16 Q. All right.</p> <p>17 A. And that's much different than him giving an opinion.</p> <p>18 Because this is not an opinion that he -- where he responds.</p> <p>19 This is where he's saying -- and that's what got my</p> <p>20 attention. He's saying here are my initial thoughts; here's</p> <p>21 what I think. So it's different than an opinion. But I</p> <p>22 will agree with you that these are his initial thoughts.</p> <p>23 Q. Okay. And I'm not going to quibble with you about --</p> <p>24 I mean, he says what he believes, and somebody out there</p> <p>25 could say, Well, in some context that's an opinion. But I</p>	<p style="text-align: right;">Page 37</p> <p>1 was a covered auto under your policy; correct?</p> <p>2 A. Unless the policy is reformed.</p> <p>3 Q. Right. So the fact that it might not have been listed</p> <p>4 among the autos to be covered by the NAICO policy until some</p> <p>5 period of time after the accident is irrelevant to the</p> <p>6 coverage discussion.</p> <p>7 A. Not irrelevant, no.</p> <p>8 Q. How is it relevant?</p> <p>9 A. Because after the accident they asked that it be</p> <p>10 listed on the policy for purposes of calculating the premium</p> <p>11 and, also, for physical damage purposes. It also indicates</p> <p>12 that they perhaps had a changed use for the vehicle. It</p> <p>13 indicates any number of things, but it's not irrelevant.</p> <p>14 Q. I mean, it has no impact, however slight, in terms of</p> <p>15 whether or not the tractor was covered at the time of the</p> <p>16 accident; correct?</p> <p>17 A. Correct.</p> <p>18 Q. All right. So even though Ryan Gilmore had at least</p> <p>19 initial thoughts concluding that NAICO not only provided</p> <p>20 coverage but also was primary, and Dick Harrison had prior</p> <p>21 to that concluded there was coverage under your policy,</p> <p>22 NAICO rejected the tender that Ms. Krmpotic made to NAICO;</p> <p>23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. Okay.</p>

10 (Pages 34 to 37)